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In the Supreme Court of the United States

OCTOBER TERM 1957.

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

COURTNEY McCRACKEN, ET AL.

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

CARL F. STEINER, ET AL.

THE MADERA IRRIGATION DISTRICT, APPELLANT

v.

PHILLIP AND JANE E. ALBONICO

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT

v.

MAURICE A. BALAAM, ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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No. 122

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v.

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OPINIONS BELOW

The opinions of the Supreme Court of California are reported in 47 Cal. 2d commencing at p. 597, 306 P. 2d 824. These opinions as well as those of the California trial courts are printed in a separate appendix to the Jurisdictional Statement (hereafter referred to as "AJS").

JURISDICTION

The opinions of the Supreme Court of California were filed January 24, 1957 (AJS 1, 139, 180, 205). Petitions for rehearing were denied on February 19, 1957, and notices of appeal to this Court were filed in time (R. 177–181, 398–402, 422–425, 650–655). Jurisdiction of this Court is invoked under 28 U. S. C. 1257 (1). By order of October 14, 1957, 355 U. S. 803, further consideration of the question of jurisdiction was postponed to the hearing of the cases on the merits (R. 656).

QUESTIONS PRESENTED

The California Supreme Court has refused to validate contracts between the United States and two California irrigation districts and a special state agency because they limit the quantity of water to be delivered from the project to owners of land in excess of 160 acres and because of stated objections to the contract provisions with respect to repayment of money spent by the United States in construction of dams, reservoirs, and other facilities for the Central Valley Project and the Santa Barbara County Project. The questions presented are:

1. Whether the decisions of the California Supreme Court rest on federal grounds, and not on an adequate state ground.

2. Whether the federal reclamation laws authorize the inclusion of the disputed requirements in the contracts.

3. Whether, regardless of the provisions of California law, Congress could constitutionally make such regulations for the distribution of water and the repayment of capital expenditures.

STATUTES INVOLVED

The basic federal and state statutes involved in this case are printed in the appendices to the Jurisdictional Statement (AJS) at pages 235–260, and in the appendix to the appellants' brief (pp. 93–120). We reprint here only:

Section 5 of the Reclamation Act of 1902 (32 Stat. 389, 43 U. S. C. 431):

> * * * No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. * * *

Section 6 of the Reclamation Act of 1902 (32 Stat. 389, 43 U. S. C. 491, 498):

> That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all

reservoirs and irrigation works constructed under the provisions of this Act: *Provided,* That when the payments required by this Act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided,* That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

Section 8 of the Reclamation Act of 1902 (32 Stat. 390, 43 U. S. C. 372, 383):

That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided,* That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated,

and beneficial use shall be the basis, the measure, and the limit of the right.

Section 46 of the Omnibus Adjustment Act of 1926 (44 Stat. 649, 43 U. S. C. 423e):

> No water shall be delivered upon the completion of any new project or new division of a project until a contract or contracts in form approved by the Secretary of the Interior shall have been made with an irrigation district or irrigation districts organized under State law providing for payment by the district or districts of the cost of constructing, operating, and maintaining the works during the time they are in control of the United States, such cost of constructing to be repaid within such terms of years as the Secretary may find to be necessary, in any event not more than forty years from the date of public notice hereinafter referred to, and the execution of said contract or contracts shall have been confirmed by a decree of a court of competent jurisdiction. Prior to or in connection with the settlement and development of each of these projects, the Secretary of the Interior is authorized in his discretion to enter into agreement with the proper authorities of the State or States wherein said projects or divisions are located whereby such State or States shall cooperate with the United States in promoting the settlement of the projects or divisions after completion and in the securing and selecting of settlers. Such contract or contracts with irrigation districts hereinbefore referred to shall further provide that all irrigable land held in private ownership by any one owner in excess of one hundred and sixty irrigable acres shall be appraised in a

manner to be prescribed by the Secretary of the Interior and the sale prices thereof fixed by the Secretary on the basis of its actual bona fide value of the date of appraisal without reference to the proposed construction of the irrigation works; and that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands under terms and conditions satisfactory to the Secretary of the Interior and at prices not to exceed those fixed by the Secretary of the Interior; and that until one-half the construction charges against said lands shall have been fully paid no sale of any such lands shall carry the right to receive water unless and until the purchase price involved in such sale is approved by the Secretary of the Interior and that upon proof of fraudulent representation as to the true consideration involved in such sales the Secretary of the Interior is authorized to cancel the water right attaching to the land involved in such fraudulent sales: *Provided further*, That the operation and maintenance charges on account of lands in said projects and divisions shall be paid annually in advance not later than March 1. It shall be the duty of the Secretary of the Interior to give public notice when water is actually available, and the operation and maintenance charges payable to the United States for the first year after such public notice shall be transferred to and paid as a part of the construction payment.

Section 9 (e) of the Reclamation Project Act of 1939 (53 Stat. 1196, 43 U. S. C. 485h (e)):

In lieu of entering into a repayment contract pursuant to the provisions of subsection (d) of this section to cover that part of the cost of the construction of works connected with water supply and allocated to irrigation, the Secretary, in his discretion, may enter into either short- or long-term contracts to furnish water for irrigation purposes. Each such contract shall be for such period, not to exceed forty years, and at such rates as in the Secretary's judgment will produce revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation; and shall require payment of said rates each year in advance of delivery of water for said year. In the event such contracts are made for furnishing water for irrigation purposes, the costs of any irrigation water distribution works constructed by the United States in connection with the new project, new division of a project, or supplemental works on a project, shall be covered by a repayment contract entered into pursuant to said subsection (d).

STATEMENT

These four cases present issues which are basic to the administration of the federal reclamation laws in California and in other western states, especially in regard to the excess lands laws—the so-called "160 acre" law—and the repayment provision under a 1939 statute—the so-called "9 (e)" provisions. The

acts of the cases and the proceedings below may be riefly summarized as follows:

1. *The Central Valley Project:*—Mr. Justice ackson, speaking for the Court in *United States . Gerlach Live Stock Company,* 339 U. S. 725, 728–29, described this development as follows:

> This is a gigantic undertaking to redistribute the principal fresh-water resources of California. Central Valley is a vast basin, stretching over 400 miles on its polar axis and a hundred in width in the heart of California. Bounded by the Sierra Nevada on the east and by coastal ranges on the west, it consists actually of two separate river valleys which merge in a single pass to the sea at the Golden Gate. Its rich acres, counted in the millions, are deficient in rainfall and must remain generally arid and unfruitful unless artificially watered.
>
> Water resources there are, if they can be captured and distributed over the land. From the highland barricade at the north the Sacramento River flows southerly, while from the Yosemite region at the southeast the San Joaquin River winds northeasterly until the two meet and consort in outlet to the sea through estuaries that connect with San Francisco Bay. These dominating rivers collect tribute from many mountain currents, carry their hoardings past parched plains and thriftlessly dissipate them in the Pacific tides. When it is sought to make these streams yield their wasting treasures to the lands they traverse, men are confronted with a paradox of nature; for the Sacramento, with almost twice the water, is accessible to the least land, whereas

about three-fifths of the valley lies in the domain of the less affluent San Joaquin.

To harness these wasting waters, overcome this perversity of nature and make water available where it would be of greatest service, the State of California proposed to re-engineer its natural water distribution. This project was taken over by the United States in 1935 and has since been a federal enterprise. The plan, in broad outline, is to capture and store waters of both rivers and many of their tributaries in their highland basins, in some cases taking advantage of the resulting head for generation of electric energy. Shasta Dam in the north will produce power for use throughout much of the State and will provide a great reservoir to equalize seasonal flows of the Sacramento. A more dramatic feature of the plan is the water storage and irrigation system at the other end of the valley. There the waters of the San Joaquin will be arrested at Friant, where they would take leave of the mountains, and will be diverted north and south through a system of canals and sold to irrigate more than a million acres of land, some as far as 160 miles away. A cost of refreshing this great expanse of semiarid land is that, except for occasional spills, only a dry river bed will cross the plain below the dam. Here, however, surplus waters from the north are utilized, for through a 150-mile canal Sacramento water is to be pumped to the cultivated lands formerly dependent on the San Joaquin.

In H. Doc. 416, 84th Cong., 2d Sess., entitled "Central Valley Project Documents," there is collected

in Part I of some 1,100 pages excerpts from the basic statutes, reports, etc., State and Federal, under which this Project was engineered, authorized and built. These materials trace the history of the early federal and state statutes and the various state activities which culminated in the 1933 Central Valley Project Act by which California authorized the project and created the Water Project Authority to construct it, H. Doc. 416, pp. 409–431. A federal contribution of $12,000,000 for what is now Shasta Dam, one of the key structures of the project, was authorized by the Act of August 30, 1935, 49 Stat. 1028, 1038. H. Doc. 416, p. 558. In 1935 state agencies were authorized to seek federal aid for the project, which was estimated to cost $170,000,000; it being stated, *inter alia*, "said project cannot be constructed at this time without such federal aid and assistance." Two bills were introduced in Congress to this end (H. Doc. 416, pp. 555–558). A total of $20,000,000 was allocated from emergency relief funds in 1935 for the Bureau of Reclamation, primarily to develop Friant Dam (H. Doc. 416, pp. 559–562). By the Rivers and Harbors Act of 1937, 50 Stat. 844, 850, the project was reauthorized as a federal reclamation project and execution of the plan proceeded. (See H. Doc. 416, p. 501.).

In the Rivers and Harbors Act of October 17, 1940, 54 Stat. 1198, the 1937 authorization of the Central Valley Project was amended so that—after the declaration of purposes to improve navigation, regulate river flow, prevent floods—it stated, "providing for storage and for the delivery of the stored waters thereof, for construction under the provisions of the Federal recla-

mation laws of such distribution systems as the Secretary of the Interior deems necessary in connection with lands for which said stored waters are to be delivered * * *," H. Doc. 416, pp. 571–572. Additional units have been added to the project from time to time pursuant to statutes which in some cases reauthorized the project. See Act of October 14, 1949, 63 Stat. 852; H. Doc. 416, pp. 620–622; Act of September 26, 1950, 64 Stat. 1036; and Act of August 12, 1955, 69 Stat. 719; H. Doc. 416, pp. 937–940.

In 1947, the Secretary of the Interior transmitted to Congress a finding of feasibility and allocation of costs which showed an estimated cost of $384,314,000, of which $199,661,000 was allocated to be reimbursable from irrigation. H. Doc. 146, 80th Cong.; H. Doc. 416, pp. 574–601. This was increased first to $682,146,000 (H. Doc. 73, 83rd Cong., 1st Sess.; H. Doc. 416, p. 649), and then to $828,744,000. H. Doc. 53, 83rd Cong., 1st Sess.; H. Doc. 416, pp. 849–871. This is the project concerned in cases No. 122, 123, and 124.[1]

As stated in *United States* v. *Gerlach Live Stock Company*, 339 U. S. 725, in the execution of the project respect has been given to appropriative, prescriptive or riparian rights valid under state law. In 1938 and 1939, the State Director of Finance executed two assignments to the United States of applications to

[1] A more comprehensive plan for development of the Central Valley basin prepared by the Bureau of Reclamation was submitted to Congress in 1948 (S. Doc. 113, 81st Cong.) as was a comparable report by the Chief of Engineers. (H. Doc. 367, 81st Cong.; H. Doc. 416, pp. 963-1111.) Neither of these plans, both of much broader scope than the Central Valley Project, have been approved by Congress.

appropriate unappropriated waters of the Sacramento and San Joaquin Rivers (R. 88–95). The United States purchased the rights of the Madera Irrigation District, owner of the Friant Dam site (see *infra*, p. 17), and the rights of many private persons or organizations (such as Miller & Lux) have been purchased. See *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, 735, 741; R. 130–131. As in the *Gerlach* case, rights are being acquired by the exercise of eminent domain. Also, the United States has made filings of its own to appropriate waters.

2. *The Cachuma Unit of the Santa Barbara County Project*:—This is the project involved in case No. 125. It is completely separate from and unrelated to the Central Valley Project. It is a project to supply water for irrigation and municipal uses along the south coast area of Santa Barbara County. The principal features are a dam on the Santa Ynez river, creating the Cachuma Reservoir, the Tecolote tunnel to deliver water across the coastal mountains to the coastal plain, and lateral distribution systems in Goleta and Carpinteria County water districts (H. Doc. 587, 80th Cong., 2d Sess., p. VII). In recommending immediate authorization of the project, the State Division of Water Resources stated (H. Doc. 587, p. 10) that "There is an urgent and immediate need for substantial supplemental municipal and irrigation water supplies for the south coast area of Santa Barbara County, including the city of Santa Barbara, and the lands and developments in the three county water districts; namely, Montecito, Goleta, and Carpinteria, and also there is demand for additional supply of

water in the Santa Ynez River Water Conservation District. The city of Santa Barbara has a critical water situation at this time." As to the beneficiaries other than the city of Santa Barbara, it was stated (H. Doc. 587, p. 10): "The underground water supplies in the county water districts are being seriously overdrawn. In some localities the pumping water levels in wells are being lowered to a point which is resulting in excessive costs and in other localities the wells are being damaged by salt water intrusion. Supplemental supplies are needed to replenish these ground water basins." An appropriation of $1,000,000 for this project was included in the Act of June 29, 1948, 62 Stat. 1112, 1126.

3. *The Ivanhoe District and Its Contract:*—The Ivanhoe Irrigation District, located south of the Friant Dam, was organized in 1948 for the purpose of securing, from the Central Valley Project, a supplemental supply of water for lands within its boundaries (R. 114, 116). The gross area of the district is 11,117 acres, of which 9,968 acres are suitable for irrigation (R. 120). Of that area, 8,865 acres had been irrigated by a system of private pumps and ditches of the owners from underground water supplies (R. 116, 121). In the area, the available surface and underground supplies were gradually being seriously reduced and were in need of replenishment (R. 116). These are the circumstances under which the contract with Ivanhoe was executed.

The contract provides for two separate matters. Part A, consisting of Articles 10–17 (R. 17–25), is the so-called "9 (e)" contract whereby provision is

made for the delivery to the District of designated amounts of water from the Friant Dam through the Friant-Kern Canal. This water is to be paid for at no more than stipulated amounts (R. 19). Provision is made for operating details, exceptions in case of water shortage and similar matters (R. 19–25). Part A of the contract is for a term of forty years (R. 17).

Part B of the contract relates to construction by the United States of a system of distribution and lateral works within the District, to a stated maximum amount of money. This construction obligation is to be repaid without interest in 40 annual installments commencing two years after a described development period ends (R. 25–27). This is generally referred to as the "9 (d)" contract.

Articles 25–43 contain various general provisions, many of them designed to protect the interest of the United States in its capital investment, and Article 33 (R. 36) provides that title to all works including the distribution system shall remain in the name of the United States until otherwise provided by Congress. There follow Articles 35–37 which constitute the "excess lands" provisions. Generally speaking, "excess land" is defined as irrigable land exceeding 160 acres in ownership of a single person or 320 acres held by husband and wife, and "large landowner" is defined as the owner of excess land (R. 38). Ignoring, for simplicity, details relating to enforcement, prevention of fraud, etc., the contract provides that water under the contract (*i. e.*, Central Valley Project water) shall not be furnished excess land unless the owner agrees to execute a sales contract agreeing to dispose of his

excess lands under stated conditions (R. 36).[2] Throughout these provisions, the reference is to "water or service made available pursuant to this contract" (R. 36) or to "Project water" (R. 37), thus making it clear that the pre-existing rights of landowners within the Ivanhoe District to their existing water supply by pumping is unaffected. The value of excess lands under the contract is to be determined by three appraisers under principles that exclude value because of the possibility of securing water from the distribution system[3] and the value of improvement is to be included but separately stated. The contract provides for sale at the appraised price of the excess lands to persons who can take title as non-excess landholders,

[2] On the authority of a general statement purporting to describe administrative procedure, the majority opinion below states that all water will be refused to the large landowner even for his first 160 acres until he executes a contract (AJS 46). The Ivanhoe contract contains no such provision. As Chief Justice Gibson, dissenting, said (AJS 65–66), the large landowner "may retain all his land, receiving federal project water for the first 160 acres and irrigating the remainder with whatever other water may be available."

[3] The majority of the court below erred in saying that the appraisal excludes any increase in value because of increase in population, an extraordinary increase in productivity, or increase because of the discovery of oil or other valuable substances beneath the land (AJS 45–46). Increases in value from such causes are not excluded; only the single element of enhancement due to the Government's project is excluded. This is not unlike the rule of *United States* v. *Miller*, 317 U. S. 369. Recognition that values may properly change for reasons unconnected with the project is shown by the contract provision that the cost of the first two appraisals and each subsequent appraisal requested by the United States will be paid by the United States (R. 38). Successive appraisals would be required only because values change.

i. e. who will own less than 160 acres; if single, or 320 acres, if married (R. 38, 39). The contract further provides for designation of which particular 160 acres or 320 acres shall be considered as non-excess and the District will be bound to furnish water only to the land so designated as non-excess (R. 39–40).

Finally, the contract provides that the District will prosecute in the appropriate State court a proceeding for judicial confirmation of the proceedings for organization of the District, its proceedings for execution of the contract, and the validity of the provisions of the contract as provided in Section 23225 of the California Water Code (AJS 252); and the contract shall not bind the United States until such confirmation is had (R. 41–42).

4. *The Madera District and Its Contract:*—The Madera Irrigation District was organized in 1920 (R. 300). Its gross area is 112,000 acres, of which 94,000 acres are suitable for cultivation (R. 300). Prior to the Central Valley Project, some 85,000 acres had been irrigated by pumps of the individual owners and a part of the area was served by a private ditch company called the Emmert System (R. 300). This system was purchased by the Madera District in 1949 (R. 301).

The District owned the site where Friant Dam has been built and had made filings to appropriate, by a dam, water of the San Joaquin at that site in order to secure a supplemental water supply. In 1939, the United States bought these properties for $300,000, the agreement being that the Madera District would receive its supplemental supply from the Madera

Canal when Friant was constructed (R. 220–232). This contract provided that the District agreed "to grant, bargain, sell, convey and confirm unto the United States, its successors and assigns forever, free of lien or encumbrance, all the following described property and rights: * * *". There follows a heading "Real Property" under which are particularly described (*a*) the dam site and (*b*) some 190 acres of gravel land. Then under a heading "Water Rights" are described rights by appropriation, prescription and riparian ownerships and the rights under the filings for Friant dam site (R. 223–225).

The Madera contract, so far as present issues are concerned, is identical with the Ivanhoe contract. It provides in Part A for delivery of water at rates not to exceed stated amounts (R. 188–202); Part B is a contract, like Ivanhoe's, for construction of a distribution system (R. 202–209). The contract contains the same provisions as to title to works, excess lands, and court confirmation (R. 212–219).

5. *The Santa Barbara Agency and Its Contract:*— The Santa Barbara County Water Agency is not an irrigation district but is an agency which was created by the State to carry out the comprehensive plan for Santa Barbara County described in H. Doc. 587, 80th Cong., 2d Sess., *supra*, p. 12. In recommending the project, the federal Commissioner of Reclamation pointed out that "The county has already secured enabling legislation which will permit the county to enter into contracts with the United States to carry out the plan of development and to enter into

contracts for the return of the reimbursable costs of the project works to the United States" (H. Doc. 587, 80th Cong., 2d sess., p. 22; see also pp. 37, 60–61, 66). The Agency, whose boundaries are coextensive with the county, did contract with the United States for delivery of the water which it, in turn, would contract to deliver to member units within its boundaries, which are composed of the City of Santa Barbara and four irrigation districts, Carpenteria, Goleta, Montecito and Summerland. The master contract between the Agency and the United States dated September 12, 1949, is identical for present purposes with the Ivanhoe contract, excluding Part B thereof. The amount of water is allocated among the five members, and temporary sale of surplus waters is provided for with the stipulation that revenues therefrom "in excess of the costs of operation and maintenance from the sale of all such surplus water shall be credited to the construction cost of the Cachuma Unit" (R. 484). The contract contains the same provisions as does the Ivanhoe contract as to the excess land laws (which are required to be included in each contract between the Agency and its members) and court confirmation (R. 497–504). A special provision "subject to agreement or the power of the United States of eminent domain" recognizes and preserves existing water rights of member units (R. 502–503). A month after the contract was executed, there was signed the Interior Department's Appropriation bill for the fiscal year 1950 which, *inter alia,* appropriated $5,185,000 for the project, referring to the contract specifically.

6. *The Ivanhoe Litigation in the Trial Court:*— Case No. 122 was instituted by the Irrigation District in the appropriate California Superior Court for confirmation of the organization of the District and the contract, as required by the reclamation laws and the contract. Courtney McCracken, a single man who owns more than 160 acres (*i. e.*, 309 acres) within the District (R. 153–155), challenged the validity of the contract by demurrer (R. 43–45) and by answer (R. 65–76) on a large number of grounds. The State of California originally made similar challenges by demurrer and answer (R. 50–65), but an amended answer of the State alleged that the contract was valid. Regional counsel for the Bureau of Reclamation appeared as *amici curiae* by leave of court (R. 112).

The trial court held that both the contract itself and the proceedings leading to its execution were invalid. Its theory, as shown by its opinion (AJS 113–135), its findings of fact (R. 114–158), and its conclusions of law (R. 158–175), may be summarily stated as follows: Section 8 of the Reclamation Law of 1902 submits all rights of the United States to State law, so that "in so far as the Central Valley Project is concerned whenever there is a conflict between the Federal Reclamation laws and the laws of the State, the law of California must prevail" (AJS 120; see also R. 138–139, 170); that by laws is meant "Constitution, statutes, rules and regulations and court and administrative decisions of this State" (R. 159); and that "The United States is and shall be subject to the jurisdiction and direction of the State

Engineer of the State of California * * * " (R. 165; see also R. 139, 161–162). The court then ruled that, under the circumstances of the origin, etc., of the Central Valley Project, the United States was trustee of an express trust of which the beneficiaries are the "beneficiaries of said [Central Valley] Project" including the Ivanhoe Irrigation District (R. 128–129, 137–138). All applications to appropriate unappropriated water whether made by the United States or acquired from others, including the State, are, the court declared, held in such a trust and the beneficiaries have an "incomplete, incipient and conditional right in the water applied for" which is a vested interest in real property (R. 127–128). The court held that the excess land provision as well as other provisions of the contract are invalid and unenforceable because they conflict with State law (R. 167–168) and because they are not authorized by but are contrary to the Reclamation Act (R. 170–173). The court also ruled that to attempt to apply the excess land provisions to McCracken would be unconstitutional (R. 172–173).

7. *The Madera Litigation in the Trial Court:*—Case No. 123 is a proceeding to confirm the contract which was heard by the same judge who decided the *Ivanhoe* case and adopted his opinion for the *Madera* case (AJS 156). The findings of fact and conclusions of law are therefore substantially the same as those in the *Ivanhoe* case (R. 297–379).

The Madera Irrigation District v. *Phillip and Jane E. Albonico,* No. 124, is a suit brought by owners of excess land to secure a mandatory order to compel

exclusion from the District of their lands in excess of 320 acres on the ground they would receive no benefit from the project (R. 403–407). The court held the excess lands provisions to be unconstitutional and made an alternative judgment that, if the excess land provisions were attempted to be applied, the excess lands should be excluded; or, if not applied, the mandatory order should be denied (R. 416–419).

8. *The Santa Barbara Litigation in the Trial Court:*—The *Santa Barbara case*, No. 125, was also a confirmation proceeding before a different trial court. Here, however, the court granted confirmation, holding the contract valid in every respect. It also held that the Master Contract was ratified and confirmed by the federal Appropriation Act cited above which specifically referred to the contract (*supra*, p. 18).

9. *The Decisions of the Supreme Court of California.*—On appeal, all of the contracts were held to be invalid in 4–3 decisions by the Supreme Court of California. The principal opinions were written in the *Ivanhoe* case. The majority held the excess land law to be inapplicable, one reason being that, if applicable, it would be unconstitutional (AJS 40–52). This view is based on a trust theory which is not the same as that espoused by the trial court in the *Ivanhoe* and *Madera* cases. Although much is made of the history of the Central Valley Project (AJS 12–22), the trust apparently is thought to arise out of California water law and to impose on irrigation districts and the State a trust for the benefit of the water users of the State (AJS 22–31). When the United States steps into the

shoes of the State to administer the trust, it is subject to the same restrictions as would be the State, the court held.

The *Ivanhoe* majority opinion invalidating the "9 (e)" provisions concluded that the contract must provide for repayment of a stated amount within 40 years, for transfer of title to the District upon repayment, and that a permanent right to receive water is vested in the District and its members (AJS 39–40, 63–64). These consequences apparently follow from the court's conclusion that the contract creates a "Debtor-Creditor" relationship, that the United States is acting as a public utility in a proprietary capacity, and that under Section 8 of the Reclamation Act controlling state law requires a utility to conform to certain rules and regulations (AJS 37, 55–56). Two vigorous dissenting opinions were filed (AJS 64–112).

In the *Madera* case, the same ruling was made as to the excess land provisions and repayment provisions, but several other provisions were held valid (AJS 154). In the *Albonico* case, the court held that, since the excess land provisions could not be included in the contract, the alternative of exclusion from the District should be stricken from the judgment (AJS 180–183). The *Santa Barbara* judgment was reversed because of inapplicability of the excess land provisions and insufficiency of the repayment provisions, while other attacks under State law upon the validity of the Agency were rejected (AJS 213–220). The three judges who dissented in the *Ivanhoe* case noted the same dissents in these three cases.

SUMMARY OF ARGUMENT

I

The United States, as one of the contracting parties, has a direct interest in establishing the validity of the contracts with the state irrigation districts. Since judicial confirmation of the contracts is by federal law a prerequisite to delivery of project water, the judgments below are a serious impediment to the successful operation of the largest reclamation project ever undertaken by the Federal Government.

Although the United States is thus concerned with the outcome of these particular cases, it is not bound by the determinations of the California courts with respect to its rights and powers, even in California. The United States was not a party to the proceedings and its rights may not be tried behind its back. *Leiter Minerals, Inc.* v. *United States,* 352 U. S. 220. Congress has not consented that the United States be sued, and therefore the United States will be free to assert its rights in spite of the decision in these cases.

II

Jurisdiction in this Court was asserted pursuant to 28 U. S. C. 1257 (1). This Court postponed consideration of jurisdiction to the hearing on the merits. 335 U. S. 803.

Jurisdiction under 1257 (1) of the Judicial Code rests upon whether the state court held invalid a federal statute. In their brief, appellants analyze the opinions to show that this is the basis of the court's decisions. App. Br., pp. 28–42. We do not repeat

this argument, since, even if it should be held that jurisdiction should not be taken under Section 1257 (1), we believe the Court should treat the appeals as petitions for certiorari and grant review under 28 U. S. C. 1257 (3) on the ground that the opinions below rest on a construction of federal statutes.

Specifically, the California Supreme Court held that the conditions in the contracts were invalid under *federal* law. It did not hold that the state irrigation districts were without authority under state law to enter into the contracts and receive the water; rather, it held that the Bureau of Reclamation is without authority under federal law to condition the receipt of the water on the acreage limitation and the repayment provisions written into the contracts.

III

The provisions of the contracts held invalid were those imposing a 160-acre limitation on the delivery of water from the project to land held by a single individual, and the sections dealing with repayment of the portion of the federal expenditures made to promote irrigation. The United States believes that these provisions are authorized by Section 5 of the Reclamation Act of 1902, Section 46 of the Omnibus Adjustment Act of 1926, and by Sections 9 (c) and 9 (e) of the Reclamation Project Act of 1939. These sections contemplate and make specific provision for those conditions in the contracts and therefore take precedence over Section 8 of the Reclamation Act of 1902, which requires conformity to state law in some particulars—even if Section 8, by itself and without

more, would support the holding below. Any possible doubt as to the correctness of this construction is eliminated by the fact that Congress has repeatedly reaffirmed the authority of the Bureau of Reclamation to include these provisions in the contracts, and has done so with respect to these particular projects with these particular types of contracts in mind. In fact, several attempts to eliminate the 160-acre limitation with respect to the Central Valley Project have been rejected. Clearly, Congress has over the years authorized the inclusion of the disputed provisions.

IV

The Federal Government has constitutional power to impose these disputed contractual requirements.

A. In the first place, there can be no doubt that the United States may validly undertake reclamation projects such as the Central Valley and Santa Barbara projects. These undertakings are authorized by the "general welfare" clause of Article I, Section 8 of the Constitution (*United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, 738–739), and in connection with such projects the United States may acquire and maintain federal structures and property.

B. It is likewise settled that the Federal Government may impose reasonable conditions on the use of federal property, and the receipt of federal monies or bounties; under its power to control and dispose of federal property (Article IV, Section 3 of the Constitution), Congress has the right to determine how such property shall be administered. See *e. g.*, *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17,

21. And once Congress has authorized the imposition of such reasonable conditions on the use of federal property (including money), a state may not *compel* use of the property without such conditions. See *e. g., Public Utilities Commission of the State of California* v. *United States,* No. 23, this Term, decided March 3, 1958; *Nebraska* v. *Wyoming,* 325 U. S. 589, 614–615.

C. The contractual provisions which are challenged in this case are reasonable.

1. Certainly, the 160-acre limitation is reasonable. The erection of the federal facilities and the delivery of project water is a bounty of great value, since a large portion of the cost is being borne by the United States; Congress may limit this bounty to small landowners, so as to spread it among as many persons as possible, and to avoid monopolization. The classification is reasonable and merely establishes an upper limit, per person, upon the federal bounty. In addition, there is no violation of any right to just compensation because, if any compensable property right should be taken in the enforcement of the 160-acre limitation, the United States would owe and be required to pay just compensation. There is, of course, good ground for questioning whether a right of "potential water users of the state" which is "'inchoate and incomplete and subject to defeasance" and "not * * * a vested right * * * in the sense that such right became a part and parcel of the freehold estate" is a compensable property right. In any event, the compensation for any right so uncertain would be

merely nominal, since, under settled law, it would have to be ascertained without reference to enhancement in value due to the federal project.

2. Similarly, the 9 (e) repayment provisions of the contracts are reasonably related to valid objectives of Congress. The power of the United States to plan, establish, and operate its projects includes the authority to fix the period and details of repayment, and to determine the disposition of title. The particular circumstances—including the great difficulties of determining costs in advance—furnish compelling reasons for postponing the ultimate settlement of title and repayment matters. It cannot be assumed that the United States would deal unfairly with the water users, and the latter will be able to take advantage of whatever rights they may have acquired during the course of the 40-year period.

D. Since the challenged contractual provisions may validly be rested both on the power to condition the grant of federal bounty and on the ownership of the project structures and dam site, it is unnecessary to decide issues of title to water rights. Even if the California Supreme Court were correct in its view that the State owns unappropriated water, the Federal Government can validly condition the use of its property on compliance with the reasonable conditions it has required in these contracts. The determination of the nature of, or title to, water rights is therefore wholly unnecessary in this case. We add, however, that we entirely disagree with the ruling of the court below on the ownership of unappropriated water.

ARGUMENT

I

THE INTEREST OF THE UNITED STATES

A. THE UNITED STATES IS VITALLY INTERESTED IN ESTABLISHING THE VALIDITY OF THE CONTRACTS HERE INVOLVED

In the Statement we have traced (*supra*, pp. 8–12) the history and scope of the Central Valley Project, the largest single undertaking pursuant to the federal reclamation program. The project was adopted by the United States at the instance of the State of California, at an estimated cost to the United States of more than $800,000,000.00. An impasse exists at the present time since the United States interprets the federal law as requiring that the excess land provisions and the other questioned provisions apply, while the California Supreme Court has held that contracts so providing are invalid. As emphasized by the brief for the appellants (Br. p. 20), there is no clash here between the United States on the one hand and the legislative and executive branches of the State of California on the other. The impasse and the present situation are the result of the action of the California courts, at the instance of minority parties,[4] in refusing to confirm the execution of the contracts between the United States and the irrigation districts.

Since such confirmation is made a mandatory prerequisite to the delivery of any project water (Sec. 46, Omnibus Adjustment Act, 1926, *supra*, p. 5), it

[4] In each instance, the vote in the irrigation districts was overwhelmingly in favor of the contracts, as the dissenting opinion of Justice Carter points out (AJS 89).

is apparent that a serious interference with the operation of the project results.[5] Moreover, the basis of the decision of the California Supreme Court is a broad one, not keyed to the Central Valley Project alone, as witness the same treatment given to the *Santa Barbara* case. The result is that, under the decisions below, future developments pursuant to the federal reclamation program, as well as the enforcement of the requirements of reclamation law on existing projects, are seriously prejudiced.

B. ALTHOUGH VITALLY INTERESTED IN THE VALIDITY OF THE CONTRACTS, THE UNITED STATES CANNOT BE BOUND BY THE DECISIONS BELOW WITH RESPECT TO ITS OWN LEGAL RIGHTS AND POWERS SINCE IT WAS NOT A PARTY TO THE STATE PROCEEDINGS

The United States was not a party to the proceedings in the California courts, and is not a party here. It was not named as a party in any of the complaints[6] and did not intervene. Nor was any officer or agency of the United States a party to these cases.[7]

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[5] While the execution of other contracts in the Central Valley Project have been judicially confirmed in the lower courts of California, the decision of the State Supreme Court in the present cases, if it stands, necessarily casts a cloud upon all such contracts.

[6] The trial court's finding XXXVIII in the *Madera* case (R. 336) that "the United States is one of the parties defendant described in the caption of plaintiff's complaint herein, in paragraph II of said complaint" is patently erroneous. The United States is there named only as being a party to the contract (R. 182).

[7] In its opinion (AJS 116) the trial court stated that the Secretary of Interior would be bound. The court's reliance on *Ickes* v. *Fox*, 300 U. S. 82, in this connection is misplaced. That was an action instituted against the Secretary as named defend-

Congress has not consented to making the United States a defendant in these proceedings. Under Section 46 of the Omnibus Adjustment Act (*supra*, p. 5), the execution of contracts by the state irrigation districts was required to be judicially confirmed. This provision restates Section 1 of the Act of May 15, 1922 (42 Stat. 541, 43 U. S. C. 511), which provided that "* * * no contract with an irrigation district under this Act shall be binding on the United States until the proceedings on the part of the district for the authorization of the execution of the contract with the United States shall have been confirmed by decree of a court of competent jurisdiction, or pending appellate action if ground for appeal be laid." The purpose of the provision was to protect the United States in relying on the contractual obligation of the irrigation districts to repay the portion of the capital outlay as to which they were bound. H. Rept. No. 662, 67th Cong., 2d Sess., p. 2. But although it was contemplated that judicial confirmation of the execution of the contracts should be a condition precedent to the delivery of water under the projects, Congress nowhere provided that the United States should submit the legality of *its* actions or the extent of *its* rights to the state courts. Therefore, there is no ground for the argument that by the provisions of Section 46 Congress submitted the United States to

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ant in the District of Columbia, the only jurisdiction in which he could be sued. 28 U. S. C. 1391 (b); *Trueman Fertilizer Co.* v. *Larson*, 196 F. 2d 910, 911 (C. A. 5); *Brasier* v. *United States*, 223 F. 2d 762 (C. A. 8), certiorari denied, 350 U. S. 913.

suit.[8] Without such consent, the rights of the United States in its property may not be concluded. See *Leiter Minerals, Inc.* v. *United States*, 352 U. S. 220.

We mention this point because the California courts have purported to pass upon federal powers and federal rights. While we urge this Court to reverse these decisions in order that the confirmation of the execution of the contracts requisite to the operation of the reclamation projects may be obtained under a proper interpretation of the federal law, we reserve the position that the rights of the United States cannot be adjudicated in its absence and that the United States may continue to assert the rights and powers it believes its possesses in spite of the decrees of the California courts.

II

THIS COURT HAS JURISDICTION TO REVIEW THE DECISIONS OF THE CALIFORNIA SUPREME COURT SINCE THEY REST ON FEDERAL GROUNDS

In view of the fact that it is the appellants in this case who have chosen the particular path for invoking the jurisdiction of this Court, it is appropriate that they, rather than the United States as *amicus*, support the jurisdiction of this Court through appeal. California has accepted this burden and has presented a detailed analysis of the opinions below in the light of the jurisdictional requirements of the federal

[8] When the United States has submitted itself to suit with respect to the extent of its rights or powers, it has customarily done so only in the federal courts. Cf. *Minnesota* v. *United States*, 305 U. S. 382, 389.

Judicial Code. Rather than burden the Court with a reiteration of these arguments, we respectfully refer the Court to pages 4 to 8 and 28 to 42 of appellants' brief and restrict our discussion to the basic reasons why the Court should accept jurisdiction.

Although the jurisdiction of the Court has been specifically invoked under 28 U. S. C. 1257 (1) on the ground that Section 46 of the Omnibus Adjustment Act of 1926, *supra*, p. 5, and Sections 9 (c) and 9 (e) of the Reclamation Project Act of 1939 (43 U. S. C. 485h (c) and (e)) were drawn in question and held invalid (Jurisdictional Statement, pp. 19–24), the Court could also take jurisdiction on certiorari if the decisions below were based on the interpretation of federal statutes. 28 U. S. C. 1257 (3). Furthermore, under 28 U. S. C. 2103, if the Court should decide that the issues should be considered under its certiorari power, rather than on appeal, it may treat the appeal as a petition for certiorari. Because of the importance of the federal issues involved in this case, we urge that it would be appropriate so to treat the present appeal in the event the decisions below should be held not to invalidate a federal law. Cf. *Sweezy* v. *New Hampshire*, 354 U. S. 234. Therefore, although we believe that the state decisions do draw into question the validity of federal laws, we shall not press that question since it is clear in any event that federal issues form the sole basis for the rulings, and the Court can and should consider the merits of the dispute under its certiorari jurisdiction, if not on appeal.

The underlying premise of the decisions of the California Supreme Court was that it would be unconstitutional to deprive large owners of land in California of their *pro rata* part of the water resources of the state which were held in trust for them, or to deprive the land owners of the right to the continued use of waters delivered to the irrigation districts by contract after the expiration of the 40 year term specified in the contracts (AJS 46–51, 55–56). The basis for this holding was that the contracts, in their impact on the property rights of landowners in California, deprived them of property without due process of law and likewise denied them equal protection (AJS 48–49, 221). Having adopted this proposition, the California court did *not* hold that the irrigation districts were unauthorized under state law to enter into these contracts; on the contrary, the court recognized that the irrigation districts were given, by state law, the right and power to contract on such terms as were required by applicable federal law and regulations (Cal. Water Code, Secs. 23195, 23197), and that water should be distributed by them "in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract * * *" (Cal. Water Code, Sec. 23200). Rather than basing its decision on lack of authority in the state agencies, the court below held that the contracts were invalid on the ground that the Bureau of Reclamation itself has no constitutional right to require such conditions, since Section 46 of the Omnibus Ad-

justment Act and Section 9 of the Reclamation Project Act of 1939 would be unconstitutional if construed to permit the imposition of such conditions. The result of this approach was that the court did not order the irrigation districts to refuse to accept reclamation water, but instead held that the conditions on the delivery of the water were illegal. If the court had proceeded on a state ground, it would have barred the state agencies from receiving the federal bounty; proceeding, as it did, on the federal ground, the court held them entitled to contract for the water but held the disputed conditions illegal. It thus appears that the California court consciously and purposely rested its decision on a federal ground rather than on an interpretation of its own laws. Under these circumstances, this Court has repeatedly stated that it will not look further to see whether there was an adequate state ground for the decision. *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, 197 n. 1.; *Indiana ex rel. Anderson* v. *Brand*, 303 U. S. 95, 98; *International Steel Co.* v. *National Surety Co.*, 297 U. S. 657, 666; *Grayson* v. *Harris*, 267 U. S. 352, 358.

III

CONGRESS HAS AUTHORIZED THE INCLUSION OF THE 160-ACRE LIMITATION AND THE REPAYMENT PROVISIONS IN CONTRACTS TO BE ENTERED INTO BY THE BUREAU OF RECLAMATION AND THE STATE IRRIGATION DISTRICTS

Basically the court's decision that the 160-acre limitation and the repayment provisions were unauthor-

ized depends upon its construction of Section 8 of the Reclamation Act of 1902 (*supra*, p. 4). The pertinent provision of that section reads:

> That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws * * *.

The California court has now determined that the 160-acre limitation and the repayment provisions of the contracts are inconsistent with state law requiring the proportionate distribution of water for irrigation (Cal. Water Code, Sec. 22250) and the right of landowners to receive irrigation water. Since, the court reasoned, under Section 8 of the 1902 Act state law prevails, it found that these contractual provisions are unauthorized. It attempts to explain away the mandatory inclusion of the 160-acre limitation as provided by Section 46 of the Omnibus Adjustment Act of 1926 as applicable solely to public lands. We believe that Section 8 is not properly to be construed as controlling over the specific requirements of the reclamation statutes and that the Congressional intent with respect to the inclusion of the contractual provisions as to these very projects has been repeatedly reaffirmed.

A. CONGRESS HAS UNEQUIVOCALLY MANIFESTED ITS INTENTION THAT THE EXCESS LAND LAWS SHALL APPLY IN CALIFORNIA AND TO THE CENTRAL VALLEY AND SANTA BARBARA PROJECTS

It is not open to argument that from the beginning of the Federal reclamation program the national policy has been one of making the benefits of this program available to the largest number consistent with the public good. To accomplish this policy, and to prevent monopoly of the rights to use the waters made available by these federally-financed projects, Congress expressly limited the quantity of lands in single ownership—both public lands opened for entry under the reclamation law and privately owned lands—which might receive project water. See Taylor, *The Excess Land Law: Execution of a Public Policy,* 64 Yale L. J. 477.

Thus, Section 5 of the Reclamation Act of June 17, 1902, 32 Stat. 389, 43 U. S. C. 431, *supra,* p. 3, provides, *inter alia:* "No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner * * *."

Section 3 of the Act of August 9, 1912, 37 Stat. 266, 43 U. S. C. 543, 544, provides that no person shall at any one time acquire, own, or hold irrigable land for which entry or a water right application shall have been made under "the said reclamation act of June seventeenth, nineteen hundred and two, and acts supplementary thereto and amendatory thereof * * * in any case in excess of one hundred and sixty acres, nor shall water be furnished under said Acts nor a water right sold or recognized for such excess * * *".

And Section 46 of the Omnibus Adjustment Act of May 25, 1926 (*supra*, p. 8), provides that upon completion of any new project no water shall be delivered until a contract shall have been made with an irrigation district organized under State law providing, *inter alia*, that all irrigable lands "held in private ownership by any one owner in excess of one hundred and sixty irrigable acres" shall be appraised, etc., and "that no such excess lands so held shall receive water from any project or division if the owners thereof shall refuse to execute valid recordable contracts for the sale of such lands * * *".[9]

In *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, it was held that, when the Central Valley project was authorized and reauthorized as a reclamation project, Section 8 of the 1902 Act and the administrative practice thereunder with respect to water

[9] Reclamation law contains many other references to the acreage limitations, ranging in time from the Act of February 21, 1911, 36 Stat. 925, 43 U. S. C. 523, 524, through Sections 12 and 13 of the Reclamation Extension Act of August 13, 1914, 38 Stat. 689, 690, 43 U. S. C. 418, 435, 443, to the Act of September 2, 1957, 70 Stat. 590, which amended the Columbia Basin Project Act, 57 Stat. 14, all of which evidence the consistency with which the Congress has adhered to acreage limitation as a basic policy in administration of the reclamation program. Although there are instances where particular projects have been exempted because of circumstances peculiar to those projects (see the discussion, *infra*, pp. 40–42, with respect to the Santa Maria Project in California) such exemptions have always been accomplished by express enactment to that effect. We disagree with the suggestion at page 48 of appellants' brief to the effect that acreage limitations are not applicable in the Imperial Irrigation District in California.

rights vested under state law became applicable. It follows that the excess land provisions of the reclamation law likewise became applicable to the Central Valley project. Both the administrators and Congress have always understood this to be the fact. H. Doc. 416, 84th Cong., 2d Sess., states that these authorizations made applicable the excess land laws to the Central Valley project, quoting Section 46 of the 1926 Act (pp. 569–570).

The argument that this specific and long-established 160-acre limitation must take second place to the general recognition of state law in Section 8 of the 1902 Act runs counter to the settled method of reading federal legislation. In the first place, Section 5 of the 1902 Act—the very same statute which contains Section 8—affirms and contemplates the 160-acre limitation. *Supra*, p. 36. The 1902 Act must certainly be read as a whole, and the specific requirements of Section 5 qualify the much more general ones of Section 8.[10] The same is true of the specific provisions of Section 46 of the Omnibus Adjustment Act of 1926. In addition, Section 46 is the later enactment by 24 years and must be taken to prevail over the earlier provision.[11]

The argument that Section 46 applies only to public lands is contrary to its specific language ("all irrigable land held in private ownership") and finds no support

[10] *Fourco Glass Co.* v. *Transmirra Corp.*, 353 U. S. 222, 228–229; *MacEvoy Co.* v. *United States*, 322 U. S. 102, 107; *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208; *Arizona* v. *California*, 283 U. S. 423; *Baltimore National Bank* v. *Tax Commission*, 297 U. S. 209, 215.

[11] *United States* v. *Borden Co.*, 308 U. S. 188, 198–199; *Girouard* v. *United States*, 328 U. S. 61, 70.

in its legislative history. But aside from these standard means of construction, repeated acts of Congress with respect to the very project here involved constitute a Congressional reaffirmation of its original action and an approval of the administrative action thereunder.

The policy of Congress not to exempt the Central Valley Project from the excess land laws was reaffirmed after full discussion in hearings, in committee reports, and after vigorous debate in both houses on the Omnibus Rivers and Harbors Bill of 1944. The bill failed of passage because of refusal of the Senate to concur in a conference report which would have included the exemption from the excess land laws, all of the debate being addressed to the excess land law issue, 90 Cong. Rec. 9493–9499.[12] The bill was promptly passed at the next session of Congress, omitting the disputed section.

In his annual report for 1946, the Secretary of the Interior stated that on October 18, 1945, he had executed the first of the Central Valley Project water contracts, stating (p. 62) "the excess land limitations and other requirements of law are fully incorporated in the Central Valley contract form". The 1947 Annual Report (p. 120) referred to the introduction of S. 912 to exempt Central Valley and two other projects from the excess land laws. Extensive hearings were had but the bill was never reported out of the Senate subcommittee (App., *infra*, p. 78). As construction of the project continued, the Secretary informed

[12] For the convenience of the Court we have summarized in the Appendix, *infra*, pp. 70–87, the legislative materials relating to this case.

Congress of the execution of contracts with irrigation districts or other water users organizations, listing them by name in most instances (App., *infra*, pp. 77–87). For example, execution of the Madera, Ivanhoe, and Santa Barbara contracts was reported in the Annual Report for 1950 (Ivanhoe and Santa Barbara, p. 39) and 1951 (Madera, p. 40). By the time of the 1951 report, the project had proceeded to the extent that individual contracts with water users under the excess land laws were appropriate, so that report stated (p. 109): "The administration of the excess land provisions of Reclamation law was given active attention. Five recordable contracts providing for delivery of Central Valley Project water to 3,570 acres of excess land are the first to be executed on the project". During this period the series of statutes whereby the project was reauthorized and additional units added to it were passed (see *supra*, pp. 10–12). And funds were appropriated annually for continuation of construction.

Continuing congressional intention that the excess land laws shall apply to the Cachuma Division of the Santa Barbara County project is equally clear. The contract itself was recognized as valid in the 1950 Appropriation Act referred to in the Statement (*supra*, p. 18). The comprehensive project for Santa Barbara County embraced, besides the Cachuma unit, the Santa Maria project which is to replenish underground water supplies for irrigation by pumping, by regulated releases from the Vaquero storage dam which would percolate through natural streams to the underground reservoirs. H. Doc. 587, 80th Cong., 2d Sess., p. 30–31.

This project was authorized by the Act of September 3, 1954, 68 Stat. 1190, which provides "That in view of the special circumstances of the Santa Maria project" the excess land laws should not be applicable thereto "so long as the water utilized on project lands is acquired by pumping from the underground reservoir." The committee reports of both houses of Congress were at pains to point out the reasons why in the physical situation of this project, where the waters were mingled underground, it would be impossible to separate project water from water to which the landowners otherwise would be entitled, and also that in the physical situation not very much of the water would go to excess lands. H. Rept. No. 1098, 83rd Cong., 2d Sess., pp. 2–3. The reasons for a special exception to the excess land laws which otherwise would be applicable were explained in detail to both houses of Congress in the debates, 100 Cong. Rec., pp. 1145–1146, 14250, 15008. Congress could hardly have shown more clearly than it did by passing this bill its intention to apply the excess land laws to all units of the Santa Barbara project except the Vaquero Reservoir. During the debates on this bill, the unswerving policy of Congress was well stated as follows (100 Cong. Rec. 1150):

> Mr. SHELLEY. May I say in conclusion that the discussion here has brought out one thing which I think is very significant. Throughout the years the Congress of the United States has rejected efforts to repeal or widely modify or emasculate the 160-acre limitation feature of the law. Time and time again it has been proposed by groups outside who wished that

> law lifted, but the Congress has rejected such efforts. I think the very discussion that has been had on the floor here today evidences a continued desire and interest on the part of the House of Representatives to continue the 160-acre limitation and this should be adequate notice to those outside of the Halls of Congress that the House will continue to maintain the attitude that it has throughout the years to preserve that law and to say that it works in the best interests of the people of this country, particularly the young veterans whom so many of us are desirous of seeing set up on small family sized farms in the West.

Even if there could otherwise be any question as to the applicability of the acreage limitations of the reclamation law to these projects, we submit that these Congressional actions, specifically related to them, are conclusive of the issue—constituting ratification of the administrative construction and confirmation and approval of the contracts. Cf. *United States* v. *Gerlach Live Stock Co.* 339 U. S. 725; *Fleming* v. *Mohawk Co.*, 331 U. S. 111; *Brooks* v. *Dewar*, 313 U. S. 354; *Mason Co.* v. *Tax Comm'n.*, 302 U. S. 186; *Swayne & Hoyt, Ltd.*, v. *United States*, 300 U. S. 297.

B. CONGRESS HAS EXPRESSLY APPROVED THE TERMS OF THE CONTRACTS WITH REGARD TO REPAYMENT

The basic law, as well as the ratification and confirmation of the administrative view as to proper contract provisions with complete detailed knowledge of the administrative construction as to repayment provisions, is just as clear as in the case of the excess land laws. The United States expends vast sums

on reclamation projects, nearly a billion dollars on the Central Valley Project alone. Part of that expenditure which is allocated to irrigation and municipal purposes is required to be repaid by the water users. The time required for such repayment was originally set at 10 years but has been progressively lengthened since then (see Appellants' brief, p. 66). Because of difficulties encountered in various projects, the question of what repayment provisions should be required was investigated with extraordinary care by a special committee, resulting in the Reclamation Project Act of 1939, 53 Stat. 1195, 43 U. S. C. 485°(h), AJS 241–245. Under Section 9 (d) of that Act, an organization of irrigators may enter into a repayment contract in which it agrees to pay annual installments which, over a period of forty years or less, will repay, without interest, the amount of the cost of the project which has been allocated to irrigation. This is the contract Congress has required to be used for *distribution systems* within the Districts. Practical considerations prohibit the application of such a process to the *water supply facilities* of vast projects like the Central Valley undertaking. Cost estimates made when the project was first undertaken bear no resemblance to the amount ultimately spent on the project.

Section 9 (e) was enacted to meet these difficulties. It provides, as an alternative to the 9 (d) repayment provisions, that the reclamation officials may contract, for a maximum forty year term, to supply water to the irrigators at a rate fixed by the Secretary of the Interior to recover annual operation and

maintenance cost "and an appropriate share of such fixed charges as the Secretary deems proper, due consideration being given to that part of the cost of construction of works connected with water supply and allocated to irrigation" (AJS 245). A comparable provision is made as to contracts to furnish water for municipal or miscellaneous purposes in Section 9 (c) (AJS 241–242). At the end of the contract period, the costs of the project having become stabilized, the rates can be re-examined to determine the reasonable future payments, having in mind the ability of the water users to pay. Another important element which will become more certain by that time is the amount of sales of hydro-electric power developed from the project. This is a large factor in the Central Valley project since there are estimates of $439,470,800 as the probable repayment or return from commercial power (H. Doc. 416, p. 853; H. Doc. 53, 83rd Cong., 1st Sess., p. 5).

After the passage of the 1939 Act, Congress several times had these contracts before it. In his 1946 Annual Report, the Secretary of the Interior said (p. 62): "On October 18, 1945 the Secretary of the Interior executed the first of the Central Valley Project water contracts. During the following months negotiations with approximately 12 additional irrigation districts have been prosecuted with a view to making available the full Friant-Kern supply throughout the San Joaquin Valley. The general form of contract utilized in these negotiations is for water service over a 40-year period at a rate that will not exceed a maximum of about $3.50 per acre foot. That type of con-

tract is made necessary by the character of the project, involving among other things extensive water exchanges and other physical features that preclude the standard repayment arrangements." Later in the report the contract was referred to (p. 89) as "the first water contract ever consummated under the provisions of Section 9 (e) of the Reclamation Project Act of 1939." The following year, in the Allocation of Costs and Feasibility Report (H. Doc. 416, pp. 574–601; H. Doc. 146, 80th Cong., 1st Sess.), the estimates of return by the year 2009 were based upon contracts made under 9 (e) and 9 (c) of the 1939 Act (pp. 577, 578) and the importance of flexibility with regard to water and cost allocations was stressed as the factor which made necessary the 9 (e) provisions (p. 584). This report also stated (p. 597) that among the criteria to be applied to the project was the fact that water for irrigation would be delivered under the provisions of 9 (e) and that "the rates will be sufficient to cover all customary operating expenses and a fixed charge, the total determined on the basis of farm benefits of the water and of the estimated ability of water users to pay over a protracted period.". In the same month that this report was submitted, the details as to the "9 (e)" provisions were explained in appropriation hearings, and a copy of one of the Central Valley contracts was filed with the committee. When explanations were first started, Representative Gore asked deferment until he read the contract (Hearings before Subcommittee of House Committee on Appropritions on H. R. 3123, 80th Cong., 1st sess., p. 210–211). This was done and a considerable time later there were

discussed the details of how the 9 (e) contract operates and the objections that had been voiced thereto by some organizations in the West, especially to the lack of provisions for renewal (*id.*, pp. 734–738). The sub-committee concluded that the objections were not well taken.

With this complete and exact knowledge both of the administrative construction of 9 (e) and of the precise contract terms whereby that construction was applied to Central Valley contracts, Congress took the many actions cited above (pp. 9–12) in re-authorizing the project and appropriating funds for execution of the plans.

In the case of the Santa Barbara project, the Congressional intention also was made clear. The recommendations for that project specified that "9 (e)" contracts would be employed as to water supplied. H. Doc. 587, 80th Cong., 2d Sess., pp. IV, 13–14, 33. This report is an excellent demonstration of how the "9 (e)" provisions operate. The cost of the project had been based upon 1947 prices and it was estimated that the cost, without interest, would be repaid in 50 years. In commenting on the report, the State of California Division of Water Resources said that, based upon 1948 prices, the Bureau of Reclamation cost estimate was 10% low (*id.*, pp. 15–16). In submitting the report to Congress, the Secretary of the Interior stated that "Any increase or decrease in costs will, of course, be reflected in extensions or reductions, as the case may be, of the period during which construction costs are returned by collections from irrigation, municipal and other water supply users" (*id.*, p. III). The

State comments, in urging approval of the project, had also recommended "that such contracts provide for the acquisition by the local interests and water users of the project works and water rights by and through the necessary Congressional action". (*id.*, p. 17). Congress authorized the project without limiting the 9 (e) provision in any respect.

Finally, any possible question that, under Section 9 (e) contracts, the water rate to be fixed by the Secretary is to include a construction component and that revenue produced in excess of operation and maintenance costs is to be treated as repayment by the district of its share of construction costs has been effectively settled by the Congress. Act of July 2, 1956, 70 Stat. 484, 43 U. S. C. Sec. 485h (1–4), AJS 246–248. The purpose of that Act was expressly stated to be to meet three major objections which had been raised to 9 (e) contracts, *i. e.*, "(1) that no assurance can be given in the contract itself or in any other document binding upon the Government that the contract will be renewed upon its expiration; (2) that the water users who have this type of contract are not assured that they will be relieved of payment of construction charges after the Government has recovered its entire irrigation investment; and (3) that the water users are not assured of a 'permanent right' to the use of water under this type of contract." S. Rept. No. 2241, June 18, 1956 (to accompany H. R. 101), 84th Cong., 2d sess., 2 U. S. Code Cong. and Admin. News, 1956, p. 2980. The bill which became the 1956 Act was enacted with the California 9 (e) con-

tracts expressly in mind. 102 Cong. Rec. 10635. Indeed, with specific reference to the doubt which had been expressed as to whether the excess paid over and above the amount for maintenance and operations would be credited to the district against the capital cost of the project, Mr. Clair Engle of California, Chairman of the House of Representatives Committee on Interior and Insular Affairs, stated: "There have been many complaints in the West that that is not presently the law. *We think the Federal Government could do it anyway.*" (Emphasis added.) 102 Cong. Rec. 2902. This was clear almost 10 years earlier when these same objections were considered in the 1947 Appropriation Committee Hearings (*supra*, p. 45). Thus, Congress expressly reaffirmed what it had said before and ratified the administrative construction. In any event, since the 1956 Act specifically answers the objections as to lack of provisions for renewal, lack of credit for payments made toward costs, and lack of a permanent right to receive project water—and since it permits amendment of existing contracts to so provide if the contracting party so desires—the objections voiced by the majority of the California Supreme Court plainly lack merit at this time.

We submit that this history shows that Congress has, with full knowledge of the matter, declared that the Central Valley Project and the Santa Barbara Project shall be operated under the provisions of the contracts here at issue.

IV

THE FEDERAL GOVERNMENT HAS CONSTITUTIONAL POWER TO IMPOSE THE DISPUTED CONTRACTUAL REQUIREMENTS

We have shown in Point II, *supra,* pp. 31–34, that the California Supreme Court rested its decision on the ground that, as a matter of federal law, the contracts in these cases should not, and could not validly, contain the disputed provisions. We have also shown (in Point III, *supra,* pp. 34–48) that the federal statutes *do* require or permit the inclusion of those requirements. In this Point, we urge that those federal requirements are valid under the Federal Constitution.

A. THE FEDERAL GOVERNMENT HAS CONSTITUTIONAL POWER TO UNDERTAKE THE CENTRAL VALLEY AND SANTA BARBARA PROJECTS

In the first place, there can now be no doubt of the Federal Government's general authority to establish and execute the Central Valley and Santa Barbara Reclamation Projects. In *United States* v. *Gerlach Live Stock Co.,* 339 U. S. 725, 738–739, this Court examined the Central Valley Project, found that Congress "elected to treat it as a reclamation project," and expressly upheld its legal validity on the constitutional ground that "the power of Congress to promote the general welfare through large-scale projects for reclamation, irrigation, or other internal improvement" is "clear" and "ample." The same reasons establish that the parallel Santa Barbara Project is also within the power granted to Congress by the

"general welfare" provisions of the Federal Constitution. See also *United States* v. *Butler*, 297 U. S. 1, 65–67; *Helvering* v. *Davis*, 301 U. S. 619, 640–641. In these Projects, the United States is expending federal funds and acquiring federal property for a concededly valid public and national purpose—the irrigation of the arid lands of the West, and the promotion of agriculture in that area. It is likewise indisputable that in performing these proper functions the United States may acquire and operate property. *Gerlach*, *supra*, at pp. 728–729, 733–734.[13]

B. THE FEDERAL GOVERNMENT MAY IMPOSE REASONABLE CONDITIONS ON THE RECEIPT OF FEDERAL MONIES AND THE USE OF FEDERAL PROPERTY

1. It is also settled beyond challenge that the Federal Government may impose reasonable conditions on the use of federal funds, federal property, and federal privileges. This power flows not only from the "general welfare" clause of Article I, Section 8, of the Constitution, but also from Article IV, Section 3, dealing with the disposition of federal property.[14] This Court has repeatedly recognized that the interest of the United States in its own property is subject to the Federal Government's power of disposal. "* * *

[13] See also Section 6 of the Reclamation Act of 1902 (quoted *supra*, pp. 3–4) to the effect that title to and operation of the water supply works "shall remain in the Government until otherwise provided by Congress."

[14] Article IV, Section 3, provides in pertinent part:

> * * * * * *
>
> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *.

no one has ever contested its supreme right to dispose of its own property in its own way." *McClung* v. *Silliman*, 6 Wheat. 598, 605. Similarly, in *United States* v. *San Francisco*, 310 U. S. 16, 29, the Court said "Article 4, § 3, Cl. 2 of the Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.'" See also *United States* v. *California*, 332 U. S. 19, 27; *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 21; *Alabama* v. *Texas*, 347 U. S. 272, 273–274.

This power over both its property and funds extends to the imposition by the Federal Government of reasonable conditions on use. Thus, limitations have been imposed on political activities of state highway employees as a condition to receipt of federal highway funds.[15] *Oklahoma* v. *Civil Service Comm.*, 330 U. S. 127. Minimum requirements for state unemployment

[15] In addition, under federal highway legislation, the receipt of federal aid is conditioned on such requirements as installation of appropriate protective devices at railroad crossings (23 U. S. C. 24a); installation of informational, regulatory, and warning signs, curb and pavement markings and traffic signals subject to concurrent approval by the state highway departments and the federal highway administrator (23 U. S. C., Supp. IV, 63); joint approval by the Secretary of Commerce and the state highway departments of the geometric and construction standards of highways in the interstate system (23 U. S. C., Supp. IV, 158 (i)); and limitation on the weight and width of vehicles using the system (23 U. S. C., Supp. IV, 158 (j)).

compensation systems have been made a prerequisite to receipt of tax benefits by state employers. *Steward Machine Co.* v. *Davis*, 301 U. S. 548. Federal control of the liquidation of debts of the political subdivisions of a state have been required as a condition to enjoying benefits of the federal bankruptcy powers. *United States* v. *Bekins*, 304 U. S. 27. Regulations requiring union officers to sign non-communist affidavits have been made a condition to the union's receiving the benefits of federal labor legislation. *Inland Steel Co.* v. *N. L. R. B.*, 170 F. 2d 247, 265 (C. A. 7), affirmed *sub nom. Communications Association* v. *Douds*, 339 U. S. 382. The urban renewal program, approved generally in *Berman* v. *Parker*, 348 U. S. 26, requires by federal regulation that property acquired by the local public agency must be sold on condition that the purchaser devote it to the renewal plan approved by the federal officials and comply with such other conditions as the federal administrator may prescribe; federal grants and loans for urban renewal require written federal approval of any basic change in the redevelopment plan and a federal approval of both the prices and the conditions upon which land is either acquired or sold. The power to impose these conditions was sustained in *Starr* v. *Nashville Housing Authority*, 145 F. Supp. 498 (M. D. Tenn.); this Court affirmed *per curiam* on the authority of the *Berman* case, *Starr* v. *Nashville Housing Authority*, 354 U. S. 916. Another recent example is *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, upholding the Commission's authority to condition a private utility's

use of government lands on an agreement to carry government power.

In short, the United States is not required, if it bestows a bounty or permits the use of its property, to refrain from imposing any conditions or limitations; on the contrary, it may properly establish reasonable conditions germane to the objectives of the grant or relevant to the federal interests in the property being used or dispensed.

2. Conversely, a state may not *compel* the use of the federal property on terms other than those prescribed or authorized by Congress. The Supremacy Clause (Art. VI) obviously forbids such a direct invasion of the Federal Government's right to manage its own property. See, *e. g., Public Utilities Commission of the State of California* v. *United States,* No. 23, this Term, decided March 3, 1958; *Leslie Miller, Inc.* v. *Arkansas,* 352 U. S. 187; *Standard Oil Co.* v. *Johnson,* 316 U. S. 481. As this Court said in *Nebraska* v. *Wyoming,* 325 U. S. 589, 614–615, discussing the Reclamation Act of 1902 and water rights under state laws: "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system."

C. THE DISPUTED CONTRACTUAL PROVISIONS ARE SUCH REASONABLE CONDITIONS

1. *The 160-acre limitation:*—The California Supreme Court thought that the 160-acre limitation was invalid because (*a*) it constitutes "an unlawful discrimination" against large landholders in violation of the right to "equal protection of the laws", and (*b*) it

constitutes a taking of the excess property without just compensation, and without taking account of "possible damage to the remainder of the land because of a possible severance" (AJS 46–49). Neither of these rulings has any merit.

(*a*). There is no unfair discrimination in the 160-acre limitation.[16] The project is designed to benefit people, not land as such. It is a reasonable classification to limit the amount of project water available to each individual in order that the Government's benefits are distributed in accordance with the greatest good for the greatest number of individuals. The limitation benefits units of land sufficient to maintain one family, assures that the large expenditure of federal funds will not go in disproportionate share to a few individuals based upon large land holdings, and prevents use of the reclamation service for speculation purposes. The restriction merely establishes an upper limit, equally imposed upon each person, upon the federal bounty to be bestowed.

In this connection, it is especially significant to note that it is a valuable bounty which is being granted by the Federal Government to the landholders. The water to be delivered by these federal projects has great value, and its availability is, in effect, a subsidy to the irrigators receiving it. The cost of the struc-

[16] It must be remembered that this limitation is not a limitation upon the quantity of land any landowner may hold. The restriction is only upon the amount of land which can be irrigated with project water—water which, without the project, would not be available at all. The contracts do not limit the right of landowners to irrigate their excess lands with non-project water.

tures necessary to collect and deliver the water is immense. The project will serve navigation, flood control, and power development, as well as irrigation and reclamation. That portion of the costs allocated to navigation and flood control (approximately 12 percent of the total) is not reimbursable. Irrigators are scheduled to repay the United States only a small fraction of the total reimbursable costs (AJS, fn. 3, pp. 78–79; see also H. Doc. 416, p. 598). In addition, the irrigators will have the long-term use of federal money necessary to finance the construction of the dams, storage and distribution systems for their benefit, free of interest. It is estimated that this interest cost alone, over the pay-out period, would roughly equal the capital investment to put water on the land in the Central Valley Project.[17] In sum, this case involves a federal bounty in the form of the privilege of enjoying water benefits at a price much less than the cost of the water made available by the dams, reservoirs, canals and other works constructed by the United States. The Federal Government therefore has a special interest in seeing that its bounty is spread as widely as possible and is not monopolized. In *Wickard* v. *Filburn*, 317 U. S. 111, 131, upholding the validity of crop marketing quotas, this Court said: "It is hardly lack of due process for the Government to regulate that which it subsidizes."

[17] This computation and other figures showing the dollar value of the federal subsidy to irrigators appear in a letter from six Members of Congress to the Attorney General of California, printed as an appendix to the petition for rehearing filed in the California Supreme Court by the State of California and a part of the record in this Court.

(*b*). The California Supreme Court also erred in upholding the claim of denial of just compensation. Chief Justice Gibson correctly stated in his dissenting opinion below that "if there is any state-recognized vested right which, in fact, conflicts with the acreage limitation, that right may be taken and compensated for by the federal government under its power of eminent domain" (AJS 73, 79; cf. p. 48). The trust declared and applied by the majority of the court cannot have the effect of imposing a state restriction on the federal power of eminent domain. That power "is inseparable from sovereignty" because it permits "acquisition of the means or instruments by which alone governmental functions can be performed." "It can neither be enlarged nor diminished by a State. Nor can any State prescribe the manner in which it must be exercised. The consent of a State can never be a condition precedent to its enjoyment." *Kohl* v. *United States*, 91 U. S. 367, 371–372, 374. It makes no difference whether the property "sought to be condemned is held * * * in trust instead of in fee." *United States* v. *Carmack*, 329 U. S. 230, 239.[18] The beneficiaries may press their claims to compensation.

There is authority for awarding compensation for whatever vested rights in water are taken or de-

[18] The scope of the federal power of eminent domain is discussed at length in *Constitutional and Statutory Authority to Condemn*, 43 Iowa L. Rev. No. 2, pp. 170–190, written by Roger P. Marquis, one of the writers of this brief. See also Brief for the Federal Power Commission as Amicus Curiae, *City of Tacoma* v. *The Taxpayers of Tacoma*, No. 509, this Term.

stroyed in execution of these projects. In *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, this Court approved compensation for a taking under eminent domain where one of the dams in the Central Valley Project impaired the seasonal inundations of the San Joaquin River which had theretofor supplied water to claimants' riparian land. In addition, Section 7 of the Reclamation Act of June 17, 1902, 32 Stat. 388, 389–390, 43 U. S. C. 421, and Section 2 of the River and Harbors Act of August 26, 1937, 50 Stat. 844, 850, expressly authorize the use of eminent domain to acquire "any rights" and "water rights" necessary for the purposes of these projects (AJS 239–240).

There is a very serious question, of course, whether rights such as those of the beneficiary of the trust defined by the court below are actually compensable. The court described the rights variously as the "inchoate right of present and potential water users of the state," "not * * * a vested right * * * in the sense that such right became a part and parcel of the freehold estate," "incipient and conditional," and "inchoate and incomplete and subject to defeasance" (AJS 33, 45, 146, 147, 149). While no decisions have been found dealing with the type of inchoate and incomplete right described by the court in these cases, it is generally held that such rights as inchoate dower and the possibility of reverter are not compensable property interests in condemnation proceedings and that the holders thereof are not even entitled to notice

of such proceedings."[19] Certainly, the "rights" of the beneficiaries under this asserted trust are far more nebulous than inchoate dower, etc. even assuming that a true trust exists (but see *infra*, p. 66).

In any event, the compensation would be merely nominal, since it would have to be ascertained without reference to enhancement in value due to the federal projects. *United States* v. *Miller*, 317 U. S. 369, 377–379; *United States* v. *Cors*, 337 U. S. 325.[20] The "rights" relate to "water not hitherto available" (AJS 72).[21] A prospective use of property can be con-

[19] *Woodville* v. *United States*, 152 F. 2d 735 (C. A. 10), certiorari denied, 328 U. S. 842; *Beard's Erie Basin, Inc.* v. *People of New York*, 142 F. 2d 487 (C. A. 2); *United States* v. *2,184.81 Acres of Land*, 45 F. Supp. 681 (W. D. Ark.); *United States* v. *1, 19.15 Acres of Land*, 44 F. Supp. 449 (E. D. Ill.); *United States* v. *2,086 Acres of Land*, 46 F. Supp. 411 (W. D. S. C.); *First Reformed Dutch Church* v. *Croswell*, 210 App. Div. 294, 206 N. Y. S. 132; *State* v. *School District No. 1*, 79 Mo. App. 103; *Briegel* v. *Briegel*, 307 Pa. 93, 160 Atl. 581; *Salvatore* v. *Fuscellaro*, 53 R. I. 271, 166 Atl. 26; *Harris* v. *Kansas City*, 293 Mo. 572, 579, 239 S. W. 1077, 1078; *Long* v. *Long*, 99 Ohio St. 330, 124 N. E. 161; *Flynn* v. *Flynn*, 171 Mass. 312, 50 N. E. 650; *Summers* v. *Sullivan*, 39 Mont. 42, 101 Pac. 166; *Wheeler* v. *Kirtland*, 27 N. J. Eq. 534; Comment, 34 Mich. L. Rev. 530; Stoyles, *Condemnation of Future Interests*, 43 Iowa L. Rev. 241, 247.

[20] The provision in Section 46 of the Omnibus Adjustment Act of May 25, 1926, 44 Stat. 649, 43 U. S. C. 423e, fixing the sale price of lands in excess of 160 acres "on the basis of its actual bona fide value at the date of appraisal without reference to the proposed construction of the irrigation works" is merely an enactment of this rule of law (see *supra*, p. 15, n. 3).

[21] "It should be noted in this connection that none of the landowners in the district has riparian rights or perfected appropriative rights to the waters involved here and that the land of Courtney McCracken, the individual defendant who is opposing confirmation of the contract, is located about 100 miles from the river from which such waters come." (Dissent, AJS 79–80.)

sidered only to the extent that it is so reasonably probable as to affect market value. *Olson* v. *United States*, 292 U. S. 246, 257. In determining whether such reasonable probability exists, the possibility of government action must be excluded. This is simply another aspect of the basic principle of the *Miller* case that special value to the condemnor must be excluded. *United States* v. *Chandler-Dunbar Co.*, 229 U. S. 53; cf. *United States ex rel. T. V. A.* v. *Powelson*, 319 U. S. 266.[22] No individual or private organization could possibly undertake the Central Valley project. Indeed, it became a federal project because the State of California could not finance it. And it is financially feasible only because the United States is contributing substantial funds on account of direct federal purposes such as navigation,[23] because revenues will be obtained from power and other sales, and because interest is being waived. It would be an idle dream for anyone to suppose that the farmers or other landowners in the Central Valley could secure the water which will be delivered to them through such agencies as the Ivanhoe and Madera Districts, absent the action of the United States. An effort to obtain a

[22] Applications of this principle to exclude attempts to enhance awards because of prospects of various government projects are illustrated by *United States* v. *Rayno*, 136 F. 2d 376 (C. A. 1), (flood control dam); *United States* v. *Lambert*, 146 F. 2d 469 (C. A. 2) (airfield acquired by United States to promote private manufacture of war time aircraft); *United States* v. *Cutlin*, 204 F. 2d 661 (C. A. 7) (ordnance plant); *United States* v. *Foster*, 131 F. 2d 3 (C. A. 8), certiorari denied, 318 U. S. 767 (ordnance plant).

[23] In the 1952 estimate, $82,030,000 of the cost was allocated to nonreimbursable items of navigation, flood control and fish and wildlife (H. Doc. 416, p. 668).

substantial award for the loss of their expectancy of getting such water would, therefore, simply be attempted payment (contrary to settled principle) for values the government's project has itself created.

2. *The contract provisions as to repayment, etc.*:— The California Supreme Court has held the contracts invalid for three reasons besides the presence of the excess-land provisions. These other grounds are (1) that the contract must provide for payment of construction costs within 40 years, (2) that the contract must provide for conveyance of the property when payment is completed because the district "is entitled to ownership of the works and property of the storage and distribution system free from any claims of the United States", and (3) that the contract must provide for a permanent right to water in the persons entitled (AJS 39–40, 63–64). Insofar as these holdings represent—as we think they do (see Point II, *supra*)—rulings on federal law, they are incorrect.

(*a*). Obviously, the period and the details of the process of repayment can be determined by the Federal Government, as part of the conditions of its grant. See *supra*, pp. 50–53. The particular requirements contained in the "9 (e)" provisions in these contracts represent a reasoned judgment as to such appropriate conditions. There is no magic in the 40-year term or any other particular period. See App., *infra*, pp. 70–74. The expressed and thoroughly understood purpose of 9 (e) contracts, especially as applied to the Central Valley Project, was to avoid any attempt to establish an iron-clad cost figure for the project. See *supra*, p. 43. Indeed,

even now, 20 years after the project was taken over as a federal undertaking, figures on total costs are merely estimates which are five times the amount originally stated (*supra*, p. 11). Nor will the completion of construction eliminate all variables, making possible a definitive repayment contract, as is possible for the distribution systems within a particular district. This is so because all of the cost of the project will by no means be borne by the irrigators and municipal water users. In 1952, it was estimated that sales of hydroelectric power would return $439,470,000 after the Trinity Division should be added to the project. H. Doc. 416, p. 853. How accurate this forecast was remains to be seen. And the water service rates to irrigators must take into consideration the ability of the farmers to pay. It is thus absolutely essential to operate the project on a tentative cost basis until it is completed and the many variables become stabilized. Moreover, there are many districts or other water user organizations which receive benefits of water produced by the project as an integrated whole. It would be impossible to transfer to the Ivanhoe District, the Madera District, and all the other organizations, title to and operation and maintenance of some portion or some feature of the vast water supply system of the Central Valley Project, as the court below holds should be done. We refer, of course, to the water supply works, such as the various dams and reservoirs, the power facilities and the interchange of water facilities, and not to local distribution systems within a district such as are covered by the 9 (d) portion of the Ivanhoe and Madera con-

tracts. Congress, in the Reclamation Act of 1902, Sec. 6, 32 Stat. 389, 43 U. S. C. 491, 498, AJS 235–236, expressly provided, "That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress." Congress has never made "other" provisions with regard to the water supply works. See the Appellants' Brief, pp. 88–89.

In addition, Congress, as this Court has held it was authorized to do, has directed that the project shall be operated "first, for river regulation, improvement of navigation, and flood control * * *." *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725, 731. A liquidation of the Central Valley Project by turning various elements over to various irrigation districts, even if practically possible, would render nugatory this authorized Congressional direction, which governs until it is changed.[24] As a Senate Committee has recently stated (Appellants' Br., pp. 88–89), the question of transfer of dams and other supply works, as distinguished from distribution systems, "involves considerations of national policy, as well as interstate considerations and should be taken up in connection with matters of broad national policy affecting water resources and their use." As already shown, the United States—having made such a tremendous investment in the project works, much of which will not

[24] All of the history of the project controverts the idea of the majority opinion below that the United States is simply the financial backer of the project and "that the parties contemplated a state project to be eventually owned and operated by the state" (AJS 18).

be repaid and is therefore a bounty to the beneficiaries (*supra*, p. 55)—has power to make appropriate provision as to title, custody, and management of the project.

(*b*). We briefly note the factors which the court below felt required the inclusion of the contractual provisions it desired. Apparently, the thought was that otherwise the United States would deny any further benefits to the Ivanhoe District and its members and, at the end of 40 years, would refuse to recognize any rights to water extending beyond the 40 years, and would deny renewal or would renew only on unreasonable terms (see AJS 54–56, 63–64). These were the contentions urged upon Congress, and rejected, at the time the Central Valley Project contracts were approved and at the time the Santa Barbara Project was authorized (*supra*, p. 46). In the field of the disposition of Federal property, the courts cannot impose what Congress rejected (*supra*, pp. 50–51).

Furthermore, there are both practical and legal answers to the contention. Certainly, the Central Valley Project is going to remain in operation indefinitely. It is equally plain as a physical fact that the beneficiaries will continue to be the owners of lands within the Ivanhoe, Madera, and other irrigation districts which are supplied by the large facilities like the Friant-Kern Canal and the Madera Canal. The only real possibility is, therefore, that the rates would be increased in a renewal contract. But these rates are necessarily limited by the ability of the farmers to pay. See App., *infra*, pp. 71–73. And the very

fact that a rate within the landowners' ability to pay can be reached only after deducting amounts for federal contributions to navigation, etc., by securing proceeds from power and other sources, and by the tremendous bounty represented by the waiver of interest (*supra*, p. 55), shows that there is little possibility of exceeding a rate which the United States could justly demand in the "arms length" transaction referred to by the court below (AJS. 36).

Repayment of construction costs has been a condition precedent to the permanent attachment to the lands within a reclamation project of the right to use project water thereon since the Reclamation Act was enacted in 1902, Section 5, Act of June 17, 1902; cf. Section 2, Act of May 15, 1922, 42 Stat. 541, 542. And we know of nothing which prohibits postponement of definitive settlement of these matters until the end of the 40-year contract period. As to the suggestion that Congress will arbitrarily ignore such rights, we think Representative Gore gave the appropriate response in 1947 when he said (Hearings before Subcommittee of House Committee on Appropriations on H. R. 3123, 80th Cong., 1st Sess., p. 737):

> I cannot conceive of a Government that would spend $384,000,000 building one of the great reclamation-irrigation projects of the world and suddenly because some evil agent of Government had gotten into a bureau, turning its back upon a people who had been benefited by it and who in turn had greatly benefited the Nation by production of food stuffs and wealth. I just do not conceive of the United States as being that kind. If that is all the fears are

based upon in signing these 9 (e) contracts, then I, as one member of this committee do not have too much sympathy with those apprehensions.

Finally, it should be noted that there is nothing in the 9 (e) form of contract that purports to deny to the District or the water users any rights they might have or acquire because of payments over the years, or otherwise.

D. IT IS UNNECESSARY TO DECIDE ISSUES OF TITLE TO WATER RIGHTS

1. The California Supreme Court apparently believed that its theory as to the state and private ownership of the waters coming from the federal projects (see *supra,* pp. 21–22) somehow altered the Federal Government's authority to impose the challenged conditions of the contracts. This conclusion necessarily involves a basic misconception of the source of the Federal Government's power which we have been discussing.

Regardless of what water rights the United States may have in the matter, it is indisputable that the Federal Government has supplied enormous funds for the project and that it has the absolute ownership of the dam site the United States bought from the Madera District (*supra,* pp. 16–17), of the Friant Dam it constructed thereon, of the Shasta Dam, and of all the other water supply structures. That ownership, as well as the federal power to condition its bounty, is sufficient, in itself, to support the various contractual requirements—whatever the property interests (under state or federal law) in the right to use the water. Even if the United States had no rights in the water, the Federal Government can validly limit use of

its monies and its project structures on compliance with reasonable conditions. For this reason, the Secretary of the Interior and the Attorney General of California were plainly right in concluding that there is no occasion in this case to adjudicate questions of title to water rights. Whatever view is taken of such rights, the power of Congress to impose the disputed contractual limitations is plain.

2. In any event, we wish to make it plain that we deny that the rights to water held by the United States are subject to the trust described by the majority opinion below.[25] The incidents of the alleged "trust", or rather the incidents which it does not have, the matters that it does not cover (see, *e. g.*, listing at AJS 35–36) and the rights of *cestuis que trust* which are not vested (see, *e. g.*, AJS 146–150 where the court below reversed the trial court's holding in the *Madera* case that the owners of excluded lands had a vested right to a pro rata share of the project water), demonstrate that, while purporting to declare a "trust," the opinion below is really declaring the subservience of the United States to all state regulations, as did the trial court in the *Ivanhoe* and *Madera* cases (see *supra*, pp. 19–20).[26]

Many of the rights acquired by the United States for the Central Valley Project were acquired from

[25] Since the court below recognized the power of the United States to acquire the water rights necessary to execute the project, cases such as *United States* v. *Burnison*, 339 U. S. 87, are irrelevant here.

[26] Of course, there is no basis for the holding of the trial court in the *Ivanhoe* and *Madera* cases that the United States, in undertaking the Central Valley Project, had declared itself to be the trustee of any express trust so as to preclude application of the Reclamation Act or other directions of Congress.

private individuals or corporations either by purchase, *e. g.*, as from Miller & Lux, or under the power of eminent domain, as in the *Gerlach* case. The United States paid for beneficial water rights unencumbered by any trust, since the trust declared by the court below does not make private appropriators trustees for other water users. To construct a so-called "trust" upon property of the United States absolutely acquired is merely to give a more palatable name to what is actually invalid state regulation.[27] Put otherwise, the United States is, at least as to those water rights acquired from private interests either by purchase or condemnation, the owner of the water rights without restriction. Accordingly, the action of the court below in including these rights within the "trust" necessarily reflects that court's view that Congress intended to subject federal property owned absolutely to state regulations. We have shown that there is no basis for such a view (*supra*, pp. 34–48).

There is another fundamental reason why the trust asserted by the court below cannot exist. To begin with, waters in California were vested in the United States along with the rest of the public domain, except insofar as express grants had been made by Spain or Mexico.[28] In recognition of this fact, the courts of California, including the majority in the instant case, have never "held that the right to appropriate waters

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[27] Such regulatory power is, of course, vested exclusively in Congress. *Clackamas County* v. *McKay*, 226 F. 2d 343 (C. A. D. C.), certiorari denied, 350 U. S. 904.

[28] We are not concerned at this point with the rights that the state may acquire as an appropriator on an equality with private appropriators or the rights it may own as owner of riparian lands.

on the public lands of the United States was derived directly from the state of California as the owner of innavigable streams and their beds", *Lux* v. *Haggin*, 69 Cal. 255, 338–339, 4 Pac. 919, 10 Pac. 674, 721. In a series of federal statutes culminating in the Desert Land Act of 1877, 19 Stat. 377, waters upon the public domain were "severed", the United States authorized the acquisition by appropriation of rights to use such water, and patents to public lands carried rights to use the waters thereon only as fixed by local law. "As the owner of the public domain, the government possessed the power to dispose of land and water thereon together, or to dispose of them separately." *California Oregon Power Co.* v. *Beaver Portland Cement Co.*, 295 U. S. 142, 162. These authorizations of appropriations pursuant to state law were not all-embracing but are subject to qualification and reservation by the United States. *Federal Power Commission* v. *Oregon*, 349 U. S. 435, 438.[29]

As in *Nebraska* v. *Wyoming*, 325 U. S. 589, 611–616, it is unnecessary here to determine who has the title to unappropriated water.[30] But this much, we think, is

[29] See also *Winters* v. *United States*, 207 U. S. 564, 577; *United States* v. *Walker River Irrigation District*, 104 F. 2d 334, 336 (C. A. 9); *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321 (C. A. 9), certiorari denied, 352 U. S. 988; *United States* v. *Rio Grande Irrigation Company*, 174 U. S. 690, 703.

[30] The fact should be made clear that while the Central Valley Project will not irrigate large quantities of federally-owned lands—most of the water being to supplement present supplies for lands already in private ownership—much of the water so used is derived from federal land. Thus, the Trinity River basin lies mostly within either the Trinity or the Shasta National Forest. H. Doc. No. 416, 84th Cong., 2d Sess., p. 858.

clear. Title to the unappropriated waters, including those in navigable streams,[31] is, as a matter of federal law, not vested in the State of California, and hence there is no corpus upon which to base the purported trust. The authorization to California and the other western states to determine under their law a procedure by which rights to the use of water could be acquired was not a grant to those states of any title to the waters, and certainly it was not intended to frustrate federal projects such as are here involved. As we have already said, further discussion of title to unappropriated waters should, we believe, be reserved until that issue is properly presented for adjudication in a case to which the United States is party.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments below should be reversed.

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MARCH 1958.

[31] The Desert Land Act applies only to nonnavigable streams.

APPENDIX

A. SYNOPSIS OF THE HISTORY OF THE 9 (e) REPAYMENT PROVISION

The original Reclamation Act (Act of June 17, 1902, 32 Stat. 388) provided for the payment of construction costs in ten annual installments. Increased costs made necessary an extension of time to 20 years. Act of August 13, 1914, 38 Stat. 686, 687. The schedule of payments under that Act called for two percent of the construction charge for the first four years, four percent for the next two years, and six percent for the remaining 14 years. Difficulties were experienced under these provisions and special relief acts were passed granting relief in the payment of charges becoming due in 1922, 1923 and 1924. H. Doc. 673, 75th Cong., 3rd Sess., pp. 12, 25. In the latter year, the act which became known as the Fact Finders' Act of December 5, 1924, 43 Stat. 672, 702, was passed which provided for the payment of construction charges computed at five percent of the average gross annual crop value for the ten years last past. Thus contracts under the Fact Finders' Act had no definite period in which repayment had to be made.[1] Difficulties connected with the administration of this provision resulted in its repeal two years later. Omnibus Adjustment Act of May 25, 1926, 44 Stat. 636, 650. This 1926

[1] This is spelled out in the hearings held on H. R. 6773, 76th Cong., 1st Sess., the predecessor bill to H. R. 6984, 76th Cong., 1st Sess., which became the Reclamation Project Act of 1939, 53 Stat. 1187. *E. g.*, pp. 50, 83, 100, Hearings, House Committee on Irrigation and Reclamation on H. R. 6773.

Act authorized the Secretary of the Interior to execute repayment contracts extending over a period of not to exceed 40 years.

Projects became more extensive and far more costly. On many projects repayment difficulties were experienced to such an extent that, in addition to granting moratoria on repayment obligations, the Congress provided for the appointment of a special repayment commission to devise a more equitable and flexible permanent plan for the repayment of the construction costs of Federal reclamation projects. Act of August 21, 1937, 50 Stat. 737. That commission was expressly charged with investigating the financial, economic, and other conditions of the various reclamation projects, and to recommend to Congress (*ibid.* at pp. 737–738):

> the best, most feasible, and practicable comprehensive permanent plan for such water-right payments with due consideration for the development and carrying on of the reclamation program of the United States, and having particularly in mind the probable ability of such water users, districts, associations, or other reclamation organizations to meet such water-right charges regularly and fully from year to year during periods of prosperity and good prices for agriculture products as well as during periods of decline in agricultural income and unsatisfactory conditions of agriculture.

This commission reported to the Congress on May 18, 1938, and its report was printed as House Document No. 673, 75th Congress, 3rd session. Some 72 hearings were held; 30 conferences were held with Governors of States in which reclamation projects are located, or their representatives, and with officials and

staffs of state agricultural colleges in the reclamation area. *Ibid.*, p. 2.[2]

It was reported to the Senate that H. R. 6984, 76th Cong., 1st Sess., which, as noted, became the Reclamation Project Act of 1939 (53 Stat. 1127), was the product of the investigation and report on repayment problems by the above-discussed Repayment Commission as well as of 37 years experience in the irrigation and reclamation of arid and semiarid lands in the west under the basic Reclamation Act of 1902 (32 Stat. 388). S. Rept. No. 758, 76th Cong. 1st Sess., p. 2. Similarly, it was reported in the House of Representatives with reference to the recommendations of the Repayment Commission: "These recommendations have served as the basis for the bill under consideration, which has been most carefully drafted in order that the interests of the United States and the water users alike might be safeguarded." H. Rept. No. 995, 76th Cong., 1st Sess., p. 2.

The need for more flexibility in repayment methods was noted by the Repayment Commission in the following words (H. Doc. No. 673, 75th Cong., 2d Sess., p. 17):

> Difficulties of repayment are increased by detailed and inflexible contracts whose terms meticulously attempt to protect the Government against loss, and require the individual water user or his organization to assume the risks and

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[2] In this connection, the report notes that hearings were held in California (*ibid.* pp. 3–4) and under the heading "Conference", the report lists (*ibid.*, p. 5):

"California:

With former President Hoover.

With California State representatives, at Sacramento.

With representatives of the University of California.

With President Wilbur of Stanford University.

With officials of the Office of Indian Affairs."

losses due to natural causes beyond human control, and the effects of uncertainties of production and of marketing, with no provision for substantial adjustment except through appeals to Congress.

Frequent appeals to Congress for revision of these contracts for extension of time for repayment, and changes in repayment of construction costs, demonstrate that the rigorous detailed contract considered necessary for construction simply does not and cannot be made to apply to repayment, dependent upon agricultural production. Repayment contracts should be written without involved legal phraseology and in language the farmer understands.

The report of the Repayment Commission noted expressly that (*ibid.*, p. 33): "There are several projects that cannot possibly repay construction charges within the 40-year limit prescribed by the Adjustment Act and must be given a more liberal schedule of repayment." Various new plans for repayment which had been proposed are then discussed in that report, including one under which "the time for repayment would extend far beyond the 40-year period" (*ibid.*), "sliding scale" repayment plans and other plans (*ibid.*, pp. 34–35).

Among the recommendations of the Repayment Commission was the following (H. Doc. No. 673, 75th Cong., 2d Sess., p. 36):

> (d) Fix a plan for the repayment of construction charges, either upon an installment basis per acre or per acre-foot of water delivered, or based upon ability to pay, as indicated and regulated by the average gross returns for lands of a project or a division of a project, on the basis of the percentage of the average gross acre income for the year nearest the date of payment for which the crop returns are avail-

able, scaling up or down from a basic percentage of 5 percent of the average gross acre income at normal value with an increase at the rate of one-twenty-fifth of 1 percent for each dollar of average annual production above the normal base and a decrease at the rate of one-third of 1 percent for each dollar of average annual production below such normal base. The normal base and the installments may vary as to projects or divisions of a project. The normal base should be subject to revision from time to time by boards of adjustment appointed by the Secretary.

Neither of these alternatives require repayment to be completed within a specified number of years. It was with this background that the so-called "9 (e)" provision was enacted, as noted in both the Senate and House reports on the bill which became the Reclamation Project Act of 1939 (*supra*, p. 72). That the Act permitted and contemplated contracts of over 40 years payout period was repeatedly spelled out during the hearings of the House Committee on Irrigation and Reclamation on H. R. 6773, 76th Cong., 1st Sess. (see pp. 21, 23–24, 50, 74, 83, 100).

B. LEGISLATIVE AND ADMINISTRATIVE MATERIALS RELATING TO THE CENTRAL VALLEY PROJECT

In gathering these materials, we have not attempted to collect all the legislation on the subject. This portion of the appendix is limited to the relatively recent annual reports of the Secretary of the Interior and congressional appropriations for the Central Valley Project, since these materials have the most direct bearing on congressional ratification of the contracts involved in the present litigation.

These materials are grouped as the Congress considered them during the calendar year, *e. g.*, in 1957

the first session of the Eighty-Fifth Congress considered the Annual Report of the Secretary of the Interior for 1956 while passing the Bureau of Reclamation appropriation for 1958.

In addition, we have included a summary of four bills, the history of which conclusively shows the intent of Congress to maintain the 160-acre limitation as a basic provision of the federal reclamation program.

1944

In the second session of the Seventy-Eighth Congress, a committee amendment to H. R. 3961, a Rivers and Harbors bill, was introduced on the floor of the House for the purpose of exempting lands in the Central Valley Project from the 160-acre limitation. This was the so-called Elliott rider. See 90 Cong. Rec. 2765, 2921–2924. The bill, including the Elliott rider, passed the House, 90 Cong. Rec. 2928, but the Senate Committee on Commerce reported the bill with an amendment striking out the Elliott rider. The Senate approved that amendment. 90 Cong. Rec. 8674–8675, 8875. In this form the Senate passed the bill. 90 Cong. Rec. 9247.

The relevant hearings on the Elliott rider are in the Hearings before a Subcommittee of the Senate Committee on Commerce on H. R. 3961, Parts 4 and 5, 78th Cong., 2d Sess., pp. 532, 536–537, 540–542, 544, 581–582, 583–584, 593, 651, 659, and 758–761.

In the House-Senate conference committee, the 160-acre exemption was restored, 90 Cong. Rec. 9478–9485, but the Senate rejected the conference report due to that inclusion, and requested a further conference. 90 Cong. Rec. 9493–9499. In the House, Representative Elliott blocked agreement to the further conference requested by the Senate, 90 Cong. Rec. 9555, and

that was the last action taken on H. R. 3961 in that session of Congress.

Early in 1945, during the first session of the Seventy-Ninth Congress, S. 35 was passed. This bill was similar to H. R. 3961, 78th Cong., 2d Sess., but did not include several controversial items, *e. g.*, exemption of the Central Valley Project from the 160-acre limitation. See S. Rept. No. 22, 79th Cong., 1st Sess., pp. 1–2; H. Rept. No. 63, 79th Cong., 1st Sess., pp. 1–2; and 91 Cong. Rec. 531–532, 1335, and 1337.

1945

Discussion of the appropriation for the Central Valley Project is found in H. Rept. No. 437, 79th Cong., 1st Sess., pp. 17–18; S. Rept., No. 316, 79th Cong., 1st Sess., pp. 16–17; and H. Conf. Rept. No. 789, 79th Cong., 1st Sess., p. 22. Hearings on the 1946 appropriation bill are reported in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1946, 79th Cong., 1st Sess., 1043–1049, 1196–1214, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3024, 79th Cong., 1st Sess., 913–914, 1028–1033. In the Senate hearings, at pp. 1030–1031, there is a discussion of the failure of the Elliott rider to the 1944 Rivers and Harbors Act to pass the Congress, and it is recognized that absent such specific Congressional action the 160-acre limitation is required in irrigation contracts with landowners benefiting from the Central Valley Project.

1946

The appropriation for the Central Valley Project is reported in H. Rept. No. 1984, 79th Cong., 2d Sess., p. 18; S. Rept. No. 1434, 79th Cong., 2d Sess., p. 26;

and H. Conf. Rept. No. 2329, 79th Cong., 2d Sess., p. 28. Hearings relating to the Central Valley Project are found in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1947, Part 2, 79th Cong., 2d Sess., pp. 315–355, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 6335, 79th Cong., 2d Sess., pp. 778–780, 794–795. At p. 483 of the House hearings, is a colloquy expressing the view that it is necessary for the Bureau of Reclamation faithfully to prosecute repayment contracts with the various water districts with which it contracts. In the debates, at 92 Cong. Rec. 5016, Congressman Elliott, who supported an earlier unsuccessful attempt to exempt the Central Valley Project from the 160-acre limitation, recognizes that the 160-acre limitation is the law.

1947

During fiscal year 1946, the first of the Central Valley Project water contracts was executed, and negotiations with additional water districts were carried on. Excess land limitations were fully incorporated in the Central Valley contract form. Due to Congressional interest in the excess land policy, a survey of the extent of excess land holdings on Federal reclamation projects was completed. Rep. Sec. Int. (1946), 62–63, 89–90.

The Central Valley Project appropriation is reported in H. Rept. No. 279, 80th Cong., 1st Sess., p. 19; S. Rept. No. 278, 80th Cong., 1st Sess., pp. 5, 23; and H. Conf. Rept. No. 1013, 80th Cong., 1st Sess., p. 4. Hearings relating to the Central Valley Project are found in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1948,

Part 3, 80th Cong., 1st Sess., pp. 721–742, 775–776, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3123, Part 2, 80th Cong., 1st Sess., pp. 1062–1067, 1111–1112. Discussion of the 9 (e) type contract occurs at pp. 208–211, 734–738, and 771–773 of the House hearings.

S. 912, introduced in the first session of the Eightieth Congress by the senators from California, Texas, and Colorado, had as its purpose the exemption of the Central Valley Project in California, plus certain projects in Colorado and Texas, from the 160-acre limitation of the federal reclamation law. The bill was referred to the Senate Committee on Public Lands, 93 Cong. Rec. 2108, but was never reported out of that committee. Extensive hearings of over 1,300 pages were held on this bill, and are in the Hearings before a Subcommittee of the Senate Committee on Public Lands on S. 912, 80th Cong., 1st Sess.

1948

Significant features of the year included the development of a repayment contract utilizing the combined authority of sections 9 (d) and 9 (e) of the 1939 Reclamation Act, initiation of a program to assure compliance with acreage limitations, and the introduction of S. 912 to exempt Central Valley Project lands from the 160-acre limitation. Rep. Sec. Int. (1947), 100, 102–103, 120.

The appropriation for the Central Valley Project is reported in H. Rept. No. 2038, 80th Cong., 2d Sess. pp. 24, 27–28, and S. Rept. No. 1609, 80th Cong. 2d Sess., pp. 6, 19, 21. Recognition of the fact that the Bureau of Reclamation is required to include the 160-acre limitation in irrigation contracts is found in testimony at the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R.

6705, 80th Cong., 2d Sess., pp. 941–942. Justification for the Central Valley Project appropriation is reported at pp. 910–913 of the Senate hearings. The House hearings are found in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1949, Part 3, 80th Cong., 2d Sess., pp. 981–985, 1015, 1035–1041, 1212–1216. At p. 1015, the discussion recognizes the 160-acre limitation, and at p. 981, the use of 9 (e) type contracts. In the debates in the House, the existing 160-acre limitation was recognized, and the policy behind it upheld. 94 Cong. Rec. 6621.

1949

Water contracts were negotiated under sections 9 (d), 9 (e), and a combination of both, under the 1939 Reclamation Project Act. Some specific contracts executed or under negotiation in the Central Valley Project are reported. A bill which would have amended section 9 (e) and contracts executed thereunder failed to pass Congress. It was noted that some fifty suits involving water rights in the Central Valley Project were pending in various courts. Rep. Sec. Int. (1948), 76, 115.

The appropriation for the Central Valley and Santa Barbara Projects are reported in H. Rept. No. 324, 81st Cong., 1st Sess., pp. 13–14, and S. Rept. No. 661, 81st Cong., 1st Sess., pp. 10–12. Most of the material relevant to the Central Valley Project discussed in the hearings involved the power aspects of the project. The irrigation aspect was discussed in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriation Bill for 1950, Part 2, 81st Cong., 1st Sess., pp. 278–283. The Santa Barbara Project discussion is contained at pp. 179–189 of the House hearings, and

in the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3838, Part 1, pp. 1092–1115, and Part 2, pp. 2406–2430, 2442–2443.

1950

During fiscal year 1949, fifteen new repayment contracts were executed under sections 9 (d) and 9 (e) of the 1939 Reclamation Project Act with various water users organizations including units of the Central Valley Project. Introduction of another bill in Congress to amend sections 9 (d) and 9 (e) is discussed, as is pending litigation involving the Central Valley Project. Rep. Sec. Int. (1949), 35–36, 75–77, 91.

The Central Valley Project appropriation is reported in H. Rept. No. 1797, 81st Cong., 2d Sess., pp. 170–171, and S. Rept. No. 1941, 81st Cong., 2d Sess., pp. 142–144. The appropriation is discussed in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriations for 1951, Part 3, 81st Cong., 2d Sess., pp. 664, 696-725, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on Interior Department Appropriations for 1951, Part 1, 81st Cong., 2d Sess., pp. 802–830. In the Senate hearings, at pp. 823–824, the committee members were informed that the Bureau of Reclamation was negotiating and contracting on the basis of the 160-acre limitation, and that the irrigation districts were willing to accept such limitation.

In relation to the Santa Barbara County Water Agency contract, see pp. 1065–1100 of the Senate hearings. A summary of the provisions of that contract is at pp. 1094–1095, and mention of the litigation determining the validity of the contract at pp. 1075, 1077 and 1081. Also see pp. 925–932 of the House hearings.

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1951

Repayment and water service contracts were negotiated and executed under the 9 (d) and 9 (e) sections of the 1939 Reclamation Project Act with a number of organizations including the Ivanhoe irrigation district and the Santa Barbara County water agency. Rep. Sec. Int. (1950), 39, 98.

The appropriation for the Central Valley Project is discussed in H. Rept. No. 339, 82d Cong., 1st Sess., pp. 10–12; S. Rept. No. 499, 82d Cong., 1st Sess., pp. 17–18; and H. Conf. Rept. No. 775, 82d Cong., 1st Sess., p. 9. The relevant testimony at the hearings is in the Hearings before the Subcommittee of the House Committee on Appropriations on Interior Department Appropriations for 1952, Part 1, 82d Cong., 1st Sess., pp. 312–313, 316–317, 491–498, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 3790, Part 1, 82d Cong., 1st Sess., pp. 533–538. Discussion of the *Ivanhoe* litigation in the Superior Court of Tulare County, California, is contained in the Senate hearings at pp. 533–536.

1952

Eleven of twenty new water service and repayment contracts were executed with Central Valley Project districts, including the Madera irrigation district. Five recordable contracts providing for delivery of project water to excess lands were also executed during the past year. In the Eighty-first Congress, the Central Valley Project was reauthorized to include certain irrigation canals as an integrated part of the project. Rep. Sec. Int. (1951), 20, 40, 93, 109.

The committee reports on the appropriation for the Central Valley Project are in H. Rept. No. 1628, 82d Cong., 2d Sess., pp. 11–12; S. Rept. No. 1803, 82d

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Cases	Pages
Allen v. Hussey, 101 C.A. 2d 457, 225 P.2d 674 (1951)	35
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Flournoy v. Wiener, 321 U.S. 253	10
Guessefeldt v. McGrath, 342 U.S. 308, 72 S. Ct. 338, 91 L. Ed. 342	21
Hall v. Superior Court, 198 Cal. 373, 245 P. 813 (1925)	35
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Ickes v. Fox, 300 U.S. 82, 57 S. Ct. 412 (1937)	27
Inyo Consolidated Water Co. v. Jess, 161 Cal. 516, 119 P. 534	16
Lindsay-Strathmore Irr. Dist. v. Wutchumma Water Co., 111 CA 688, 296 P 983 (1931)	35
Merchants National Bank v. Escondido Irr. Dist., 144 Cal. 329 (1904)	35
Nebraska v. Wyoming, 325 U.S. 589, 65 S. Ct. 1332 (1945)	28, 32
Tulare Irr. Dist. v. Collins, 154 Cal. 440, 97 P. 1124 (1908)	35
United States v. Gerlach Livestock Co., 339 U.S. 725c	25, 29, 31

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Cong., 2d Sess., pp. 9–11; and H. Conf. Rept. No. 2451, 82d Cong., 2d Sess., pp. 7–8. The repayment contract program is discussed in the Hearings before the Subcommittee of the House Committee on Appropriations on the Interior Department Appropriations for 1953, Part 3, 82d Cong., 2d Sess., pp. 1108–1115. Justification for the Central Valley Project appropriation is at pp. 860–876, 1153–1155 of the House hearings. The relevant Senate hearings are in the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 7176, 82d Cong., 2d Sess., pp. 988–1006. Justification for the Cachuma project and discussion of the 9 (e) contract with the Santa Barbara County Water Agency is at pp. 854–859 of the House hearings.

1953

During fiscal year 1952, repayment contracts having a face value of over $90 million were entered into with twelve irrigation districts. In the Central Valley Project some repayment and water service contracts were executed, as well as fifteen contracts covering excess lands under the terms of the reclamation law. The Secretary's report directed attention to various litigation, including the *Ivanhoe* and *Madera* cases before the Superior Court of California. Rep. Sec. Int. (1952), 28, 111, 123.

The appropriation for the Central Valley Project is discussed in H. Rept. No. 314, 83d Cong., 1st Sess., pp. 11, 14, 16; S. Rept. No. 445, 83d Cong., 1st Sess., pp. 13–14; and H. Conf. Rept. No. 947, 83d Cong., 1st Sess., p. 9. The *Ivanhoe* litigation is discussed in the Hearings before the subcommittee of the House Committee on Appropriations on Interior Department Appropriations for 1954, Part 3, 83d Cong., 1st Sess., pp. 1194–1203, and the Hearings before a Subcommittee of the Senate Committee on Appropriations

on H. R. 4828, Part 2, 83d Cong., 1st Sess., pp. 1845–1848. Other aspects of the Central Valley Project are in the House hearings at 1173–1194. Justification for the Cachuma Project in Santa Barbara County is at pp. 1162–1172 of the House hearings.

1954

Repayment contracts having a face value of over $85 million were executed with over fifty irrigation districts. In addition, water service contracts were entered into with various irrigation districts. Feasibility reports on two units of the Central Valley project were submitted to the Congress. The litigation section of the Secretary's report mentions certain Central Valley Project cases. Rep. Sec. Int. (1953), 165, 179, 207.

The Central Valley Project appropriation is reported in H. Rept. No. 1460, 83d Cong., 2d Sess., pp. 10–11; S. Rept. No. 1506, 83d Cong., 2d Sess., pp. 15, 17; and H. Conf. Rept. No. 1926, 83d Cong., 2d Sess., pp. 10–11. The appropriation hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Interior Department Appropriations for 1955, Part 2, 83d Cong., 2d Sess., pp. 881–901, and the Hearings before a Subcommittee of the Senate Committee on Appropriations on H. R. 8680, 83d Cong., 2d Sess., pp. 1000–1015, 1468–1474. Mention of the 9 (e) contracts with the Santa Barbara County Water Agency is made at pp. 870–880 of the House hearings.

H. R. 2235 was introduced in the first session of the Eighty-third Congress for the purpose of authorizing the construction of a project at Santa Maria, California. H. Rept. No. 1098, 83d Cong., 2d Sess. and S. Rept. No. 1789, 83d Cong., 2d Sess., recommended the passage of the bill, and further recom-

mended that, due to the unusual physical aspects of this project, the lands included therein be exempted from the 160-acre limitation. The exemption of this project was carefully considered. See Hearings before the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs on H. R. 2235 and H. R. 2259, 83d Cong., 1st Sess., pp. 57–58, 66–67, 79–80, 84. The debates in the House and Senate also reveal careful scrutiny of this exception to the usual federal reclamation law, and the bill passed the Congress only after affirmation of the basic validity of the 160-acre limitation and recognition of the unusual aspects of this particular project. See 100 Cong. Rec. 1144–1146, 1149–1150, 14248–14250, 15007–15008, 15019–15024. The bill was enacted into law as the Act of September 3, 1954, 68 Stat. 1190.

1955

Repayment contracts were entered into with ten irrigation districts, and sixty-seven water service contracts were executed during fiscal year 1954. The validation proceedings involving the Ivanhoe and Madera irrigation districts and the Santa Barbara County water agency were in the appeal stage before the Supreme Court of California. Rep. Sec. Int. (1954), 50, 82.

The appropriation for the Central Valley Project is reported in H. Rept. No. 747, 84th Cong., 1st Sess., pp. 8–9; S. Rept. No. 700, 84th Cong., 1st Sess., pp. 8–9; and H. Conf. Rept. No. 1085, 84th Cong., 1st Sess., p. 5. Relevant portions of the hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Public Works Appropriations for 1956, Western Section, Part 1, 84th Cong., 1st Sess., pp. 2–16, 40–55, and the Hearings before the Subcommittee of the Senate Committee on

Appropriations on H. R. 6766, 84th Cong., 1st Sess., pp.74–81, 332–334. Discussion of the contract with the Santa Barbara County Water Agency occurs at pp. 109–114 of the House hearings.

1956

During fiscal year 1955, contracts were executed with nine irrigation districts for repayment of the cost of new irrigation works. Twenty six water users' organizations signed contracts for the purchase of storage water rights or for interim and long-term water service. The contested validation proceedings involving the Ivanhoe and Madera irrigation districts, and the Santa Barbara County water agency, were on appeal, pending decision in the California Supreme Court. Rep. Sec. Int. (1955), 53, 90-91.

The Central Valley Project appropriation is reported in H. Rept. No. 2181, 84th Cong., 2d Sess., p. 5; S. Rept. No. 2169, 84th Cong., 2d Sess., pp. 4–6; and H. Conf. Rept. No. 2413, 84th Cong., 2d Sess., p. 4. Relevant portions of the hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Public Works Appropriations for 1957, Reclamation Volume, 84th Cong., 2d Sess., pp. 988–1013, and the Hearings before the Subcommittee of the Senate Committee on Appropriations on H. R. 11319, Reclamation Volume, 84th Cong., 2d Sess., pp. 135–147.

H. R. 6643, introduced in the first session of the Eighty-fourth Congress, proposed to amend the reclamation laws to provide that excess lands acquired by foreclosure or inheritance could temporarily receive water from federal irrigation projects for a period of five years.

Both the House and Senate Committees on Interior and Insular Affairs reported the bill favorably, ex-

plaining in their reports that the legislation would permit compliance with the basic principle of the acreage limitation provisions of reclamation law without impairing the lending value of lands in reclamation projects. H. Rept. No. 1748, 84th Cong., 2d Sess.; S. Rept. No. 2378, 84th Cong., 2d Sess. The bill passed the House and Senate without debate, 102 Cong. Rec. 2901, 11541, and was enacted as the Act of July 11, 1956, 70 Stat. 524.

1957

Numerous repayment contracts were executed, including one with the Santa Maria unit of the Santa Barbara Project. Congress enacted a project authorization to cover a sub-unit of the Central Valley Project. Rep. Sec. Int. (1956), 17, 61.

The appropriation for the Central Valley Project is reported in H. Rept. No. 552, 85th Cong., 1st Sess., pp. 16–17; S. Rept. No. 609, 85th Cong., 1st Sess., pp. 32–33; and H. Conf. Rept. No. 1049, 85th Cong., 1st Sess., p. 12. The relevant hearings are in the Hearings before the Subcommittee of the House Committee on Appropriations on Public Works Appropriations for 1958, Part 1, 85th Cong., 1st Sess., pp. 436–459, and the Hearings before the Subcommittee of the Senate Committee on Appropriations on H. R. 8090, Reclamation Volume, 85th Cong., 1st Sess., pp. 254–262. The *Ivanhoe* litigation is discussed at pp. 261–262 of the Senate hearings, and at pp. 455–456 of the House hearings. On the floor of the House, it was recognized that the 160-acre limitation must be included in all Bureau of Reclamation contracts. 103 Cong. Rec. 8721.

1958

Although numerous repayment contracts were executed with irrigation districts during fiscal year 1957,

the *Ivanhoe* litigation was affecting further contract negotiations. During the Eighty-fourth Congress, bills were passed removing objections to the 9 (e) type contract widely used on the Central Valley Project, and clarifying the answers to problems arising out of the acquisition of excess lands by foreclosure or inheritance. Rep. Sec. Int. (1957), 41–42, 88.

C. APPROPRIATIONS FOR THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

Act of July 3, 1945	59 Stat. 318, 338
Act of July 1, 1946	60 Stat. 348, 363
Act of July 25, 1947	61 Stat. 460, 472
Act of June 29, 1948	62 Stat. 1112, 1124
Act of October 12, 1949	63 Stat. 765, 778
Act of September 6, 1950	64 Stat. 595, 685
Act of August 31, 1951	65 Stat. 248, 254
Act of July 9, 1952	66 Stat. 445, 450
Act of July 31, 1953	67 Stat. 261, 265
Act of July 1, 1954	68 Stat. 361, 365
Act of July 15, 1955	69 Stat. 354, 356
Act of July 2, 1956	70 Stat. 474, 475
Act of August 26, 1957	71 Stat. 416, 419

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